

Award No. 5653

Docket No. 5614

2-PC-MA-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Machinists)**

**PENN CENTRAL COMPANY (Formerly New York Central
RR - Northern District)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Machinist R. H. Robb was unjustly dealt with when he was dismissed from service on December 16, 1965, at the Maintenance of Way Shop, Jackson, Michigan.
2. That Mr. Robb be restored to service with his seniority unimpaired.
3. That he shall be compensated for all loss of wages and benefits until he is restored to service.

EMPLOYEES' STATEMENT OF FACTS: Machinist R. H. Robb, hereinafter referred to as the Claimant, was employed as a Machinist by the New York Central Railroad System, hereinafter referred to as the Carrier, at its Maintenance of Way Repair Shop at Jackson, Michigan.

On December 16, 1965, a winter day, the Claimant reported for work. He was assigned by his foreman to remove a snow blade on the outside of the shop. The Foreman assigned two (2) Machinists to assist him. The Claimant objected to working with these two (2) men and asked the foreman to assign two (2) other men who he could work safely with. The foreman refused to consider the Claimants request, telling him to work with the two (2) men he assigned or go home. The Claimant feeling that he could not work safely with the men assigned to help him, went home as instructed.

Under date of December 16, 1965, Mr. J. J. Connors, Superintendent, advised the Claimant that his action in going home, was considered as severing relations with the New York Central Railroad Maintenance of Way Shop. (See Exhibit A)

The Local Committee protested Mr. Connors' action in holding the Claimant out of service, because he had not quit, and no charges had been filed

On Wednesday, November 17, 1965, you told your Foreman you would have to be off Friday, November 19th to answer a court summons. Mr. Punschke, your foreman, asked you to show him the summons and he would then grant your request. This you failed to do, and did not appear Friday, November 19th for work.

This is an outright case of insubordination and any further incident of this kind will not be tolerated."

Considering the seriousness of the offense as result of the Claimant leaving his job without authority after refusing to work with two men who were assigned to work with him, and his past unsatisfactory record with this Company, the action taken by Carrier was neither arbitrary nor capricious and the penalty imposed was neither excessive nor unreasonable.

This claim should be denied.

CONCLUSION: The facts of record show that the Claimant refused to comply with instructions of his superior therefore was insubordinate. Considering this insubordination and his past record, the dismissal penalty was neither excessive or unreasonable.

Carrier submits the claim of the Employee is without merit and should be denied.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

It is axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the Carrier in disciplinary matters, unless its action in that respect can be said to be arbitrary, unreasonable, or unjust.

A degree of insubordination was established in the investigation held by the Carrier on December 29, 1965. See Employees' Exhibit B, page 3 — Claimant's Committeeman Spicer:

"We are here in Mr. Kill's behalf too. I have the facts from Mr. Ken Hoch on December 16, 1965 — Kill, acting as Foreman, asked Robb to install snow blade on TD-20 — Robb said not unless Eckert went too — Kill offered 3 men. Kill asked Robb if he was going home or work — Robb said he would go home unless he sent Eckert out. Kill reported to Mr. Connors Robb refused to work — Connors asked Robb if he was going to work — Robb said 'no, I am going home.' Also, work rules posted in bulletins state that all men are subject to road work or outside work."

However, the record in this dispute, taken as a whole, indicates the existence of certain mitigating factors. In view of the record, the Claimant should be restored to service with all seniority and vacation rights unimpaired, but without compensation for time lost, or other benefits.

AWARD

Claim sustained in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1969.