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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6456
Docket No. 6299
2-GM&O-CM-'73

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

Parties to Dispute: { System Federation No. 29, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Gulf, Mobile and Ohio Railroad Company

Dispute: Claim of Employee:

1. That Carman D. M. Cisco was improperly suspended July 9, 1971, and subsequently dismissed from service.
2. That accordingly, the Carrier be ordered to restore Carman Cisco to service with all rights unimpaired, and paid for all time lost including Health and Welfare premiums and with six (6) percent interest annually on wages.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

The notice to claimant advised him that he was removed from service pending the hearing, for insubordination. Rule 34 of the Agreement provides for suspension pending a hearing.

Claimant's representative at the hearing argued for reinstatement but stated, in effect, that it would not be appropriate to compensate claimant for wages lost. This would lend credibility in support of the conclusion that the claimant was insubordinate as understood by the parties.

Claimant did not deny his foreman's testimony at the hearing that the normal procedure was for claimant to carry out an order but, "after a thorough argument". The Organization claimed that by failing to reprimand and discipline claimant for arguing with his foreman on prior occasions, the carrier had lost the right to impose the discipline of dismissal at this time. This is based on the theory that to make an issue of the arguments at this time was a change of policy, and that such change required notice by way of warnings to claimant before imposing severe penalties.

Carrier's decision to act upon an employe's course of improper conduct may come at any time. It should not require a statement of policy for an employe to know that constant bickering and arguing with his supervisor will lead to trouble. When claimant forgot to shut off his torch at the end of his shift, he provided the proverbial "last straw" to an irritating situation.

There was substantial evidence to support the hearing officer's conclusion. Many prior Awards have established that the policy of this Board is to leave undisturbed a decision based on substantial evidence produced at a hearing which has been fairly conducted after proper notice. Likewise, it is the policy of this Board to avoid interference with penalties unless the penalty is unreasonable and excessive to the point where it is arbitrary and capricious. The uncontradicted evidence is that claimant has not been a cooperative or willing employe. In an industry where everyone should work together for their own safety as well as in the public interest, we do not find that the penalty imposed was arbitrary or capricious.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E. A. Killion
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1973.