

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 16 (formerly System
(Federation No. 23), Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company (formerly
The Wheeling and Lake Erie Railroad Company)

Dispute: Claim of Employees:

1. That Carman Helper J. J. Ruggeri was unjustly assessed a five (5) day deferred suspension on January 31, 1974.
2. That the Carrier be ordered to remove the five (5) day deferred suspension from Carman Helper Ruggeri's record immediately.

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 waived right of appearance at hearing thereon.

Claimant, Mr. J. J. Ruggeri, a Carman Helper with sixteen years of clear service at the time of the incident in question, was assigned to the second shift in the Carrier's Car Shop at Brewster, Ohio, working 4:30 P.M. to 1:00 A.M. At approximately 4:35 P.M. on January 31, 1974, Assistant Car Foreman C. A. Bevier instructed the Claimant to sweep the

upstairs lunch room. Mr. Bevier testified (Tr. p. 2 and 3) that Claimant did not comply with his instructions. He testified that Mr. Ruggeri went upstairs to the lunch room and at about 4:40 came back down and poured himself a cup of coffee and went back upstairs. Thereafter Mr. Bevier along with General Car Foremen H. A. Haldren and M. G. Pandlis went upstairs to the lunch room and could not find the Claimant in the lunch room, but did find him on the balcony outside the lunch room leaning on the balcony rail drinking coffee. When asked why he was not sweeping the lunch room, Mr. Bevier testified that the Claimant replied, "I don't have a broom". When asked why he was drinking coffee instead of looking for a broom, Mr. Bevier testified that the Claimant did not answer the question. At approximately 4:50, fifteen minutes after the Claimant had received his initial instructions to sweep the lunch room floor, he began to sweep the floor. For the insubordination in the lack of effort to perform his assignment, the Claimant was assessed a five-day deferred suspension against his service record under the provisions of Rule 13(D). An investigation was held on March 14, 1974; and the Carrier found that the investigation supported the charge and the 5-day deferred suspension.

The Organization contends that the record shows no insubordination in that the Claimant never refused to do the work, and in fact completed the assignment. The Organization contends that the Claimant had previously received permission to take necessary medicine with coffee rather than water. The Organization contends that the quick assessment of discipline by the Carrier was discriminatory, arbitrary and capricious. The Organization contends that the Hearing Officer's behavior was in violation of Rule 13(D).

This Board disagrees with all the contentions of the Organization. The Claimant testified (TR p. 15) that:

"I had asked him why I had to do it when there were younger men than me and Mr. Bevier told me that Mr. Haldren had told him that I had to do it and I thought the youngest man should do it because I am older than he is in seniority and I wanted a union man and there wasn't any. So after the safety meeting I had come upstairs to look for a broom and I didn't find a broom so I had gone downstairs to take my medicine. I had got me a half cup of coffee."

We find that ample evidence of record supports the Carrier's finding of insubordination. The Claimant thought the assignment was wrongful. The Claimant testified that he could not find a broom upstairs; and instead of looking for a broom downstairs, when he came back downstairs, he got a cup of coffee and returned upstairs, at this point knowing that there was no broom upstairs. The Claimant was in fact taking two kinds of medicine, one type of capsule every three hours and another type of tablet four times a day. But, ten minutes after the start of the shift to go from one floor down to another to the material bin, fill a cup of coffee from a thermos, return two flights of stairs to the lunch room, cross the lunch room and go out on the balcony and lean on the rail and drink coffee with or without medicine, cannot serve as a legitimate defense for not doing assigned work. Further, when asked why he was drinking coffee, the Claimant did not state he was taking medicine. The Carrier had every right to expect the Claimant to do the assigned work. While five minutes very often is lost looking for a tool to do work, the evidence indicates that the Claimant was not looking for the broom, and knowing full well that there was no broom in the lunch room, he went back to the lunch room without a broom. Insubordination may occur without a stated refusal to do the work, as in the instant case, where the employee's actions were diametrically opposed to complying with the lawful instructions of his supervisor.

We find that the minor discipline of a five-day deferred suspension was not excessive or arbitrary under the facts of the instant claim.

We find that the Hearing Officer's behavior was not in violation of Rule 13(D); and that the Claimant received a fair investigation.

We shall deny the Claim.

A W A R D

Claim denied.

Form 1
Page 4

Award No. 7128
Docket No. 6930
2-NW-CM-'76

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of September, 1976.