

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas when award was rendered.

Parties to Dispute: (System Federation No. 42, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Florida East Coast Railway Company

Dispute: Claim of Employees:

1. The Florida East Coast Railway Company unjustly, improperly, and without supporting the burden of proof dismissed Electrician R. C. Thompson, Senior, from service beginning June 28, 1974.
2. That accordingly, the Carrier be ordered to remove this unjust and improper dismissal from the service record of the Claimant and compensate him for all time lost in connection therewith, beginning June 28, 1974 through and including such date as he is properly restored to the service of the Carrier.
3. In addition, that, Mr. Thompson be reinstated with all seniority rights, vacation rights and privileges, insurance rights and protection as well as all other compensation lost as a result of this improper and unjust dismissal.

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.

Claimant was charged with being insubordinate. After hearing and investigation, Claimant was dismissed from Carrier's service.

Claimant, through the Organization, assigns several errors, and we shall treat them separately.

1. Claimant was unjustly suspended pending the investigation in violation of Article 29.

Rule 29 provides for suspension, "in proper cases", pending a hearing. There are numerous awards of various Divisions as well as Public Law Board awards that hold that insubordination is a "proper case" for suspension pending a hearing. There is nothing in this record to indicate Carrier's action was in error.

2. Claimant did not receive a fair and impartial hearing because the General Chairman was not advised of the precise charge in writing.

Rule 29 requires that an employee and his representative receive written notices of the precise charge. In this dispute, the Claimant was the Local Chairman and it had been the practice to send written notices to the Local Chairmen rather than General Chairmen. The General Chairman represented Claimant at the hearing, and did not raise this failure as an objection. In any event, there is no showing that Claimant was in any event prejudiced thereby.

3. Carrier failed to show that Claimant was insubordinate.

The Organization contends that Claimant "did not refuse to do the work but did not want to perform the work because the job was unsafe."

A review of the lengthy record in this dispute compels the conclusion that there was ample evidence that Claimant refused to perform the work without justification. There is no basis, from this record, that the job was unsafe justifying Claimant's refusal to perform the work. By his own testimony, Claimant admitted to having performed the same work in the same manner without protest. There was further testimony that no one else in the shop had ever refused previously to perform the work in the manner required by Carrier.

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The remaining assignments of error were without merit.

On the basis of this record, we find that Carrier's actions were not arbitrary or capricious and the claim must be denied.

A W A R D

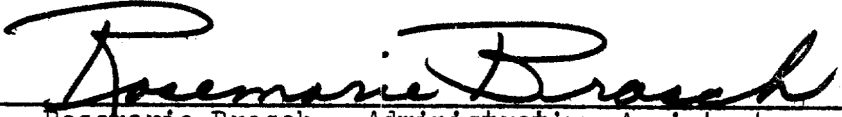
Claim denied.

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Award No. 7150
Docket No. 7053
2-FEC-EW-'76

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of October, 1976.