

The Second Division consisted of the regular members and in addition Referee Joseph A. Sickles when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Chicago and North Western Transportation Company

Dispute: Claim of Employee:

1. That under the current agreement Lineman Electrician R. E. Davisson was unjustly suspended from the service of the Carrier on May 28, 1975 and who was subsequently unjustly dismissed from the service effective June 16, 1975.
2. That, accordingly, the Carrier be ordered to reinstate R. E. Davisson to service with all rights and benefits he enjoyed prior to May 28, 1975, such as Travelers Insurance, vacation pay, supplemental sickness benefits, and all other benefits covered by Agreement and paid for all time lost until he is restored to service.

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.

On May 28, 1975, Claimant was taken out of service pending an investigation for "... failure to perform your duty on May 27, 1975." On June 2, 1975, Claimant was directed to appear for formal investigation concerning that charge.

Subsequent to investigation, Claimant was dismissed from service.

On May 27, 1975, Claimant, a Lineman Electrician, was instructed to make certain repairs to a broken antenna which was situated atop an 80-foot pole. The Claimant did not perform the work, stating, at the time, that his declination was due to the "height" of the pole. At subsequent times, and at the investigation, Claimant justified his position based upon height and personal safety.

The un rebutted testimony of record shows that weather conditions were not a deterrent factor, and that although poles are 16 to 45 feet, all of Carrier's linemen have climbed 80 foot poles. It also shows that Claimant had received training in proper pole climbing procedures and there was another Communication Department employee present to assist.

Carrier was required to call another employee, from a different location, to perform the work and Claimant conceded that it was not fair to Carrier to require it to resort to that method of having work performed,

This Board has noted, on prior occasions, that a Carrier may not require an employee to place himself in an unsafe position. But, there must be some objective basis for an employee's concern in that regard. See, for example, Award 7065.

The Claimant is a lineman, and the record is clear that linemen must do certain climbing in the performance of their duties. Although he states that he did not "refuse" to climb, Claimant's actions certainly had the same result.

We have also noted that Claimant previously refused to climb a sixty-foot pole. Even were we to consider the record in the most favorable light to Claimant, it is apparent that he is not able to perform a required function of his position.

Claimant's objection to suspension prior to investigation was not raised while the dispute was under consideration on the property and, consequently, is not properly before us. The assertion that the Hearing Officer engaged in improper conduct at the investigation has been noted. However, based upon the testimony of Claimant, we cannot conclude that the hearing was conducted in a manner prejudicial to the employee.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 3rd day of December, 1976.