

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

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current agreement, Carman John W. Miller, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of March 4, 1975 after twelve (12) years of service with the Carrier.
2. That the Carrier be ordered to:
 - (a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired, and be compensated for all time lost retroactive to March 4, 1975 when he was unjustly removed from service.
 - (b) Grant to the Claimant all vacation rights he would have had, had he not been removed from service.
 - (c) Assume and pay all premiums for hospital, surgical and medical benefits, for Claimant and dependants. Including all costs for life insurance.
 - (d) Pay into the Railroad Retirement Fund the maximum amount that is required to be paid for an active employe, for all time he is held out of 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 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.



Prior to the time of Claimant's dismissal, he was employed as a Carman at Carrier's station of Thorne, Nevada. This dispute arose when Claimant was charged, by letter dated February 14, 1975, as follows:

"You are hereby notified to be present in the office of the Agent, Thorne, Nevada, at 10:00 AM, Thursday, February 20, 1975, for formal hearing in connection with your allegedly absenting yourself from your duties as Freight Carman at Thorne, Nevada on Friday, February 14, 1975 and refusing to return to your assignment when instructed by Trainmaster J. E. Cody to do so, for which occurrence you are charged with responsibility which may involve violation of the first paragraph of Rule 810, and that portion of Rule 801 reading: 'Employees will not be retained in the service who are... indifferent to duty, insubordinate...or who conduct themselves in a manner which would subject the railroad to criticism.' of the General Rules and Regulations of Southern Pacific Transportation Company.

You are entitled to representation in accordance with your agreement and may bring to the investigation such witnesses as you may desire."

We have reviewed the transcript of the hearing and find there to be more than substantial evidence establishing the charges against Claimant. The evidence shows that Claimant had been granted permission to leave his assignment early on February 14, 1975 by Car Foreman Andersen after his work at Thorne had been completed. The record further shows that Claimant had been made aware that important shipments of explosives from the U.S. Navy were to be made from Thorne on this day and that notwithstanding this knowledge, Claimant left his assignment before he inspected these shipments. Carrier's Trainmaster Cody telephoned Claimant at his home and instructed him to return to duty to inspect these important shipments, and Claimant refused to do so.

This Board has consistently held that insubordination is a very serious offense which can justify dismissal. Such an offense is even more serious where employes such as Claimant, the only employe of his craft at Thorne, refuse to be cooperative and follow instructions from an officer of Carrier to perform work of his craft which was essential to Carrier's responsibility to an important shipper. In fact, the record clearly shows that it was essential that the shipments of explosives be inspected on February 14 so that they could be shipped immediately.



We have reviewed the correspondence between the parties and find that at an early time in the progression of the dispute on the property, Claimant was offered reinstatement on a leniency basis on the condition that he not exercise his seniority at Thorne due to his demonstrated inability to be cooperative with the personnel at the Navy Ammunition Depot at Hawthorne and because of his demonstrated inability to work independently. Claimant refused this offer. This offer was again made by Carrier's highest officer and refused by Claimant.

Claimant apparently has an otherwise good previous record with Carrier. Considering this and the record of this dispute in its entirety, we have concluded that Claimant should be now reinstated with seniority unimpaired, but without any compensation or any other benefits for the time he has been out of service. In so doing, we admonish Mr. Miller that if he wishes to retain his position with the Carrier, he will have to act responsibly and with flexibility in carrying out his responsibilities as a Carman. Carrier has a very important responsibility to its customers to handle their shipments promptly and efficiently, and if Claimant is unable to cooperate in this important responsibility, he does not deserve to be retained in the service.

A W A R D

Claim sustained to the extent set forth in the opinion.

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 30th day of September, 1977.

