

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International
 { Association
 {
 { Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That, under the current Agreement, Sheet Metal Worker, R. I. Meeks, (hereinafter referred to as Claimant), was unjustly suspended from service on November 5, 1975, and dismissed from service on December 19, 1975, pending an investigation that was held on November 17, 1975.
2. That, accordingly, the Carrier be ordered to reinstate Mr. R. I. Meeks to service, seniority rights unimpaired and pay him all wages lost as a result of his dismissal.
3. In addition, make Claimant whole for all losses.
4. Compensate the Claimant for all overtime losses.
5. Make Claimant whole for all holiday and vacation rights.
6. Pay premiums on health and welfare, Travelers' Policy GA23000.
7. Pay Illinois Central Hospital Association premium.
8. Pay all sickness premiums under Providence Insurance Policy.
9. Pay interest of six (6) percent on all lost wages.
10. Remove all charges brought against Claimant from his personal record.

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.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

In the instant case, Claimant was a Pipefitter with approximately four (4) years' service, working at Carrier's Paducah Shops on the 3:40 PM to 12:00 AM shift. On November 5, 1975, the Claimant, along with Pipefitter O. L. Bush, was assigned by his immediate supervisor, J. L. Smiley, to apply stainless steel grills to a heater car in the Tank Shop.

During the course of this operation, Foreman Smiley encountered difficulty in determining the proper pieces of grill to apply to the heater car, and therefore brought in General Locomotive Foreman J. C. Lockett for assistance.

Foreman Smiley left shortly thereafter, and in the course of trying to properly fit pieces of grill on the heater car under the supervision of Foreman Lockett, Claimant refused to follow an order of Foreman Lockett, stating that his immediate Foreman, J. L. Smiley, would have to order him to do it.

After Foreman Smiley was brought back on the scene, Claimant still refused to carry out the order of Foreman Lockett, insisting that Foreman Smiley should be the one to give the order. When Foreman Lockett then informed Claimant that Claimant would be advised as to when and where to appear for a formal investigation on the charge of refusing a direct order, Claimant admittedly advised Foreman Lockett that "the best thing he could do is just to get away from me before I knocked his damn teeth out."

Claimant alleges that he "begged" Foreman Smiley to tell him what to do, but Smiley said nothing, and Foreman Lockett "kept butting in", whereupon Claimant "got mad and lost his temper."

Insubordination cases commonly appear in one of two forms. One type is the willful refusal or failure to carry out a direct order, instruction or company rule. The other is a personal altercation between employee and supervisor, often involving shouting matches, profane or abusive words, and actual or threatened violence. The instant case involves elements of both forms of insubordination.

However, a close reading of the record in the instant case also reveals that there were some mitigating circumstances involved in Grievant's actions.

The record before us reveals that more heat than light was generated by both parties in their handling of events on the night of November 5, 1975.

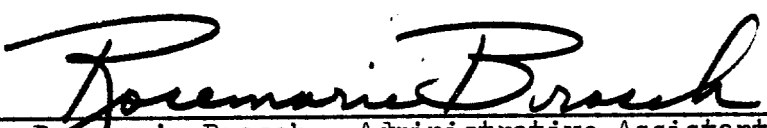
Consequently, we find that Carrier's decision was not reasonably consistent with the seriousness of the proven offense in the instant case. There is no substantial evidence that the incident on November 5, 1975, was anything more than a first offense and a single episode of misconduct. Therefore, even though it was of itself sufficiently serious to merit stern disciplinary action, it did not merit discharge. Claimant is to be reinstated with his seniority rights intact, but without any back pay.

A W A R D

Claim sustained to the extent indicated above.

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 6th day of January, 1978.

