

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That Carrier improperly suspended Machinist M. S. Morishige (hereinafter referred to as Claimant) from service on the afternoon of September 30, 1975 and subsequently suspended him from service for ninety (90) days.
2. That Carrier be ordered to compensate Claimant for all wage loss from October 1, 1975 until he was restored to service on December 30, 1975.

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.

Claimant was dismissed, and later reinstated after serving an actual disciplinary suspension of ninety (90) days, following a hearing where he appeared under the charge of insubordination in that he refused to change worn brake shoes on Locomotive Unit 1199 after being instructed to do so several times during his tour of duty on September 30, 1975. Claimant's basis for failing to comply with direct orders of his supervisors to change the brake shoes on the trucks on locomotive 1199 was that the trucks were dirty and Carrier was required, under Rule 49(b) of the agreement between the parties, to clean the locomotive before assigning mechanics or apprentices to work on it. The record shows that Claimant, after being permitted to consult with his local chairman, even refused to perform the work under protest.

Carrier's position is essentially that Claimant had no grounds upon which he could justifiably refuse to perform the work in question. Further, Carrier notes that locomotive 1199 was needed for service at approximately 3:30 P.M. that afternoon (only ninety (90) minutes from the time Claimant was instructed to perform the work in question) and that in the judgment of Carrier's supervisors, who had checked the condition of the locomotive, it was not dirty enough to require washing. Carrier's officers further testified that on many previous occasions, employees performed similar or identical work on locomotives that were in the condition of Unit 1199 without complaint or without requesting that it first be cleaned. Carrier further notes that a fellow employee who was also assigned to work with Claimant in changing the brake shoes did not complain about the cleanliness of the locomotive. Also, Carrier notes that immediately after Claimant committed this act of insubordination, two other machinists were assigned to and did change the brake shoes on the locomotive without complaint. These two employees, on their own initiative, used a nearby airhose to blow the dust off the locomotive trucks before changing out the brake shoes. Carrier posits that Claimant, had he used good common sense could have done the same thing and avoided this entire incident.

In deciding this dispute, we again lay out some fundamental principles of not only this Board, but virtually every arbitrational authority on the subject of insubordination. It is now beyond controversy, and well established, that unless an employee is subject to immediate threat to his personal safety or welfare, he must carry out orders of his supervisors. If he believes such orders or instructions are in violation of the labor contract, he still must obey orders and then utilize the established grievance machinery in the labor contract to challenge their propriety. To successfully sustain a showing of a clear and present danger to personal safety or welfare, there is a strong burden on the refuser to prove that the danger is demonstrably real and that it is of a degree exceeding the boundaries of usual probabilities in the conventional assigned routines of job functions.

In applying these principles to the dispute at hand, we find that Claimant was wrong in not following the instructions of his supervisors. There was no clear and immediate danger shown or proved, as attested by the fact that two other machinists did in fact perform this same work without complaint. Further, the testimony of Carrier's supervisors clearly established that no danger was associated with performing the work. In reaching this finding, we caution Claimant, his union representative and employees and union representatives in this industry that the foregoing are the firmly established ground rules in these types of confrontations and that employees who fail to follow them are placing themselves in a serious position of possibly terminating their railroad careers, for, insubordination is a serious offense.

We now turn to the discipline assessed, ninety (90) actual days. In our recent Award 7358, between these same parties, we found that, notwithstanding the Demerit System of discipline which Carrier had promulgated, it could assess disciplinary suspension. We adhere to the findings of that decision on this issue, and find that Carrier, under the agreement, could properly assess an actual disciplinary suspension in lieu of assessment of demerits. In considering the quantum of discipline assessed, we have reviewed a myriad of previous awards on the issue of insubordination. We find especially informative the lengthy discussion on these previous authorities in Award 6547 of this Division. Considering this, and also the fact that Claimant had an otherwise unmarked record and was considered a good employee, we think that the proper amount of discipline assessed in this case should be forty-five (45) days of an actual disciplinary suspension and order that the discipline be accordingly reduced. In so doing, we hope that Claimant has learned a valuable lesson and impress upon him that orders and instructions of supervisors must generally be followed and that failure to do so, under circumstances like those in this case, could indeed result in serious consequences.

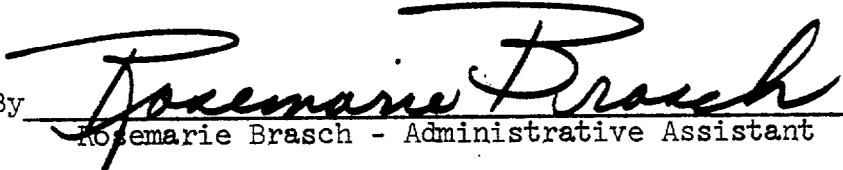
A W A R D

Claim sustained to the extent indicated in our findings.

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 13th day of January, 1978.

