

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 8, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. Appeal of the October 13, 1976 disciplinary removal of Radio Maintainer D. D. Lee from the service of the Missouri-Kansas-Texas Railroad Company for allegedly being insubordinate on October 12, 1976 when he refused to accept and acknowledge receipt of a set of climbing tools and a booklet on pole climbing instructions; and, for an alleged act of arbitrarily absenting himself prematurely from his superior's presence.
2. That, accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to restore monthly rated Radio Maintainer D. D. Lee to their service with all seniority rights, fringe benefits and vacation rights unimpaired; and, paid for all monthly wage loss commencing with October 13, 1976, and for each monthly work day thereafter until restored to the Carrier's 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 October 12, 1976 Claimant was removed from service and charged with insubordination; he was charged with refusing to accept, and acknowledge receipt of, a set of climbing tools and a booklet on pole climbing instruction and further leaving the property at quitting time despite being asked by a Carrier officer to remain to discuss his refusal.

The record contains substantial evidence to support Carrier's conclusion that Claimant was guilty of the charges. However, it is also

apparent that Carrier had, to a degree, contrived to force the situation leading to the discharge: specifically by choosing to offer climbing tools to an employee who had earlier in the same day admitted to Carrier's officer that he suffered from a severe fear of heights which made it difficult, if not impossible, for him to climb poles. In spite of this circumstance it is abundantly clear that an employee choosing to contest the validity of an assignment has the obligation to comply with directions received from Carrier and raising the issue through the grievance procedure subsequently.

In its submission, Carrier cites and relies in part on Award 7035 of this Board (in addition to others). In that Award we note that we said, inter alia:

"Insubordination ... can exist in varying degrees of seriousness. Similarly, the discipline imposed should be measured by the seriousness of the offense..."

In this dispute there is no question but that Claimant was guilty of insubordination. However, in the light of the particular circumstances surrounding the incident, we find that the discipline assessed has served its purpose and direct that Claimant be reinstated without compensation for time lost, but with seniority rights unimpaired.


A W A R D

Claim sustained in part in accordance with the Findings 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 1st day of November, 1978.