

J. W. GOHMANN
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. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current agreement, Shop Electrician James W. Segalla, King Street Coach Yard, Seattle, Washington, was unjustly suspended for ten (10) days from the service of the Carrier on May 29, 1976.
2. That accordingly the Carrier be ordered to compensate Mr. Segalla for all time lost, the record of suspension be removed from his personal record, together with restoration of any lost vacation time, holidays, sick pay or hospitalization benefits and any other rights, privileges or benefits he may be entitled to under schedules, rules agreements, or law.

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 employees 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.

This is a discipline dispute in which Claimant was assessed a ten day suspension following an investigation.

Initially, Petitioner argues that the charge in this dispute was not specific and further that the Notice of Discipline contained the conclusion that Claimant had violated certain safety rules which had not been mentioned in the original charge. Our examination of the original charge, contrary to Petitioner's position, indicates that it was specific and sufficient to apprise Claimant of the particular incident in which he was allegedly insubordinate. The transcript of the investigation substantiates this conclusion in that it is evident that Claimant secured witnesses and

was clearly aware of the thrust of the investigation. Under well established principles (e.g. Third Division Awards 12898, 20238 and 20285) we find that in this case the notice was precise and comprehensive enough to place Claimant on notice as to the matter under investigation. Further, an examination of the Notice of Discipline reveals that it found the Claimant guilty of the infractions charged in the original charge and held that those infractions violated certain safety rules. Such conclusion cannot be construed to be prejudicial or improper, per se.

Petitioner also alleges that Claimant was precluded from securing certain witnesses to testify at the investigation. Other than Claimant's bare assertion at the conclusion of the hearing, there is no substantiating evidence on this point. It should be noted that Claimant and his representative would have been well within their rights in requesting a recess (for whatever time was necessary) to secure additional witnesses, yet this alternative was not sought. There is no alternative but to reject this contention posed by Petitioner.

With respect to the merits, there is clearly ample evidence to indicate that Claimant refused to obey the instructions of his supervisor, including his own testimony. While there is no indication of the extent of the argument which ensued in this case, there certainly was a serious disagreement, even if no abusive language. Following the disagreement, Claimant decided to leave work and clocked out. It must also be noted that there was no evidence to indicate that anyone's "life or limbs" would have been endangered had Claimant obeyed his foreman's instructions.

Insubordination is a serious matter in this industry, frequently resulting in dismissal. Such penalty is reasonable when the implications of refusing to accede to authority are examined. While there are certainly degrees of insubordination usually warranting different penalties, outright condonation is not acceptable. In this dispute whether or not Claimant was correct in his interpretation of the job requirements and sequence of work is immaterial; he had no right to argue with and refuse to obey his foreman's instructions. Since the fact of the argument and refusal is not in question, Claimant was clearly guilty of the charges. Since the penalty was relatively lenient in view of the gravity of the offense, there is no basis for disturbing Carrier's conclusion as to the discipline imposed.

A W A R D

Claim denied.

Form 1
Page 3

Award No. 7936
Docket No. 7568
2-BNI-EW-'79

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 24th day of May, 1979.