

Form 1 **RECEIVED**

NATIONAL RAILROAD ADJUSTMENT BOARD
JUN 4 1979
SECOND DIVISION

Award No. 7940
Docket No. 7736
2-CMSTP&P-CM-'79

J. W. GOHMANN

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. 76, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 {
 { Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company did unjustly and improperly remove Carman G. Liska from service on December 18, 1976 pending hearing held on December 28, 1976 and further held him out of service until January 19, 1977, in violation of the controlling Agreement, specifically Rule 34(G).
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to compensate Carman G. Liska for every day that he was deprived of working at his usual and regular assignment as a Carman Carpenter in the Milwaukee Road Diesel House starting December 18, 1976 until he was restored to service on January 19, 1977.

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 suspended from the service of the Carrier on December 18, 1976 pending an investigation of his alleged insubordination. Claimant was returned to service on January 19, 1977 with a finding that he was guilty of the offense and that the time of his being held out of service, December 18, 1976 to January 19, 1977, would serve as his discipline.

The transcript of the investigation reveals that substantive evidence of probative value was submitted at the hearing which would support the finding that Claimant was insubordinate in failing to obey a direct order on the day in question. The time Claimant was held out of service was not an excessive amount of time to assess as a penalty for the offense.

A further question raised by the Organization is whether it was proper to hold the Claimant out of service pending the investigation. Rule 35 provides that "Suspension, in proper cases, pending a hearing, which shall be prompt, shall not be deemed a violation of this rule". The question we must decide is whether under the facts at bar, this is a proper case.

Certain agreements contain language which define a proper case as "one where leaving the man in service pending an investigation would endanger the employe or his fellow employes or company interest", such as existed in the rule in question in Award 6900 cited by the employes, in which it was decided that insubordination was not a "proper case".

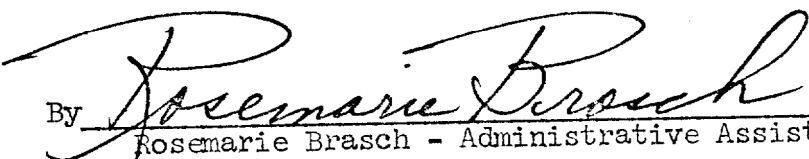
The greater weight of the authorities of this Board support the proposition that insubordination is a proper case for holding an employe out of service pending an investigation where the term "proper case" is not defined in the rule. See Awards 4404, 7150, 6518 and 7034. We will follow the great weight of the established precedents of the Board and deny the claim.

A W A R D

Claim denied.

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.