

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 91, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That the Louisville and Nashville Railroad Company removed Upgraded Electrician Apprentice K. C. Grimes from service without just and sufficient cause and in so doing deprived him of his rights to earnings from September 21, 1976, until such time as he is restored to service.
2. That, accordingly, the Louisville and Nashville Railroad Company be ordered to restore Upgraded Electrician Apprentice K. C. Grimes to the Carrier's service with seniority rights unimpaired and compensated for all wage loss commencing with the date of his discharge, September 21, 1976, and continuing thereafter until such time as he is restored to service.
3. That the Louisville and Nashville Railroad Company be further ordered to make Upgraded Electrician Apprentice K. C. Grimes whole with respect to all rights, privileges and benefits associated with his railroad employment, such as, but not limited to vacation, health and welfare and insurance benefits.

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 were given due notice of hearing thereon.

Claimant was dismissed for insubordination, Carrier charging that on August 15, 1976 he failed to apply an electric switch on Cab 6428 and that he refused to comply with the instructions of his Foreman to surrender the switch after having refused to apply it to caboose 6428. Claimant entered Carrier's service on February 26, 1976 as an electrician's apprentice. At the time of the incident, about 6 months later, he was working as an Upgraded Electrician.

On the day of the incident, Claimant reported to his foreman that Caboose 6428 would not be serviceable because of a bad light switch and that a replacement switch was not in stock. The foreman found a switch and gave it to Claimant with instructions to use it. The replacement switch given Claimant was a single-pole one and off type, whereas the defective light switch in the caboose was a 3-way switch.

Claimant indicated to his foreman that the installation of the replacement switch would be unsafe. The foreman assured him that the switch was safe and instructed him to use it. Claimant refused and also refused to turn over the switch to the foreman.

At the investigation, Claimant testified that he did not apply the switch because the amperage ratings on the two switches differed; that he was unsure of the results; that he wished to avoid responsibility for damaging company property; that he felt it was his responsibility since he had signed the caboose sheet; and that he retained the switch because he thought it might be used in proceedings against him.

A reading of the record discloses that the foreman told Claimant that he would take responsibility for directing Claimant to use the switch. At the investigation, the following colloquy took place between the Hearing Officer and the foreman:

"Q. Did you observe the amperage reading on the new switch?

A. Yes, I did. The switch was a Bryant single pole toggle switch, with an amperage reading of 10 amps, 125 volts, 5 amps, 250 volts. I handed him the switch and showed him (Claimant) where it read 10 amps, 125 volts and he stated that this was the first time he had seen the 10 amps, 125 volts. He also stated he did not apply the switch because it read only 5 amps, 250 volts.

Q. Isn't the rating of this new switch the same as the switches that are to be applied to all cabooses?

A. The amperage reading on both of these switches are similar.

Q. Is there any reason why this switch could not have been applied to the caboose 6428 from your electrical experience and background.

A. No, with a wiring change the switch that he did not apply could be wired up in the on position and worked on the caboose effectively."

It is not clear from the record that an apprentice with less than 6 months' service would know that the new switch could work with a wiring change or that the foreman instructed him at the time that a wiring change would make the switch operable and safe.

No showing has been made that installation of the switch given Claimant by the foreman would be unsafe, or that it placed Claimant in physical jeopardy. It is well understood that in case of personal danger to his health or safety, an employee is not obliged to comply with a supervisor's instructions, but the record is barren of evidence of personal danger to Claimant.

We find in this case that although Claimant failed to comply with the foreman's instructions, we must recognize certain mitigating circumstances. Both the Claimant and the foreman overreacted to the situation, no doubt due in part to the fact that both were relatively new and inexperienced on their respective jobs. Claimant had been in the Company's employ for less than 6 months at the time of the incident. Moreover, although hired as an apprentice, he was working at the time as an Upgraded Electrician. The foreman was not Claimant's regular foreman but was filling a vacation vacancy.

Claimant's response and reaction to the Foreman's instructions were misguided, but not malicious. Even if he honestly believed that the switch given him was not safe he should have installed it when so directed by the foreman, particularly when the foreman advised him that he would take responsibility.

Generally speaking, it is the duty of employees to obey orders. A cardinal principle in the law of the shop -- unless there is threat to an employee's life or limb -- is to "obey now, grieve later". Claimant should have complied with the foreman's request.

Based on a reading of the record, we have reached the following conclusion: Claimant's refusal was misguided, rather than capricious, stemming from his inexperience as an Upgraded Electrician which left him unsure and uncertain as to the safety risks involved in substituting one type of switch for another. The record indicates that he did try to seek advice from nearby employees concerning the difference in the switches. Given that he had less than 6 months' service at the time, having been hired as an apprentice, and the other factors hereinabove cited, we find mitigating and extenuating circumstances leading us to conclude that the discipline of dismissal was excessive, and that a lesser penalty is appropriate.

In reaching this conclusion, we do not condone Claimant's conduct. We caution Claimant that by this decision he is put on notice that he must comply with reasonable instructions from his supervisors and that he has no right to refuse to comply with such instructions in the absence of any probative evidence or valid reason that such instruction or order is arbitrary, unreasonable, discriminatory, or would subject him to clear and evident danger. His failure to do so will make him subject to discipline.

Carrier is to be commended for providing an opportunity for apprentices to upgrade themselves, but in our judgment this case emphasizes the need to consider an apprentice's capability to respond to the needs, requirements, and responsibilities of an upgraded position before such assignments are made.

Form 1
Page 4

Award No. 7956
Docket No. 7776
2-L&N-EW-'79

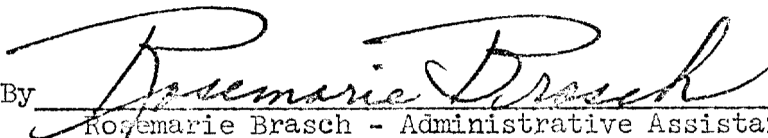
Our decision, then, is that the Claimant shall be reinstated to service with seniority rights unimpaired, but without compensation for time lost subsequent to the date of his dismissal.

A W A R D

Claim disposed of in accordance with the above 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 June, 1979.