

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

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
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( Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That Stationary Engineer Cleveland Whalum was unjustly suspended from service from 3:45 p.m., October 12, 1976 to 3:45 p.m. October 26, 1976 following an investigation which was held on October 14, 1976.
2. That accordingly, the Belt Railway Company of Chicago be ordered to pay Stationary Engineer Cleveland Whalum for every day he would have been eligible to work from 3:45 p.m., October 12, 1976 to 3:45 p.m., October 26, 1976. And that this record of discipline be removed from Mr. Whalum's personal file.

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.

At the time of the incident here in question, the Claimant was a Stationary Engineer at the powerhouse facility in the Carrier's Clearing Yard in Chicago. He had nearly 17 years of service with the Carrier and had held the Stationary Engineer job in the last few years of that service. So far as the record shows, he has been a wholly competent and responsible employe.

At issue is an incident which resulted in a 10-day (workdays) suspension against the claimant. On October 12, 1976, the claimant worked the day shift. Near the end of the shift, Supervision received word that the afternoon-shift Stationary Engineer was unable to come to work. The Claimant was asked to double-over. He declined for good reasons (and no question is raised to the legitimacy of his declination). Supervision next telephoned the homes of the other two Stationary Engineers. Neither of them could

come in. A Laborer with some powerhouse experience but without a Stationary Engineer license was thereupon asked to fill the vacancy. He accepted. On the grounds that this Laborer did not have a Stationary Engineers' license and therefore was not qualified to work in the capacity of Stationary Engineer, the claimant objected to the Laborer's proposed assignment to the job and took the position that he (the claimant) would not leave the powerhouse facility until properly relieved. The end of the shift had arrived when this occurred. Supervision disagreed with the claimant and instructed him to leave. The claimant persisted in his stance despite reiteration of the instructions, which were given three times. He went home when he was given a letter taking him out of service pending an investigation.

We think the penalty is unduly harsh.

There is no escaping the finding that the claimant was guilty of disobedience and of failing to heed the long-settled principle -- which he, as Local Chairman, could scarcely have been unfamiliar with -- that the grievance procedure is the proper vehicle for resolving a dispute as to the propriety of an assignment. The rejoinder which the claimant entered at the investigation -- to the effect that he could not be expected to obey an order to open a gas line and put a match to the escaping gas -- is wide of the mark. We can hardly hold that compliance with the instructions which the claimant was here given would have created a situation of clear and present danger. Nor, as it turns out, is there a contractual requirement which would have precluded the use of the Laborer for the filling of the vacancy.

We think the record is equally clear, however, that this was not an incident of sheer bucking. On the one hand, the claimant's objections were well-intentioned and grounded in concern for the Carrier's best interests. And, on the other hand, the Supervisor was inexperienced (having held the post for but four months) and evinced no interest in what the claimant was seeking to convey. His deaf-ear stance was a contributing factor of substantial proportions.

Under all the circumstances, we believe that a reduction in the penalty to a 5-day (workdays) suspension is the proper result. We so hold, and we direct that the claimant be reimbursed accordingly.

A W A R D

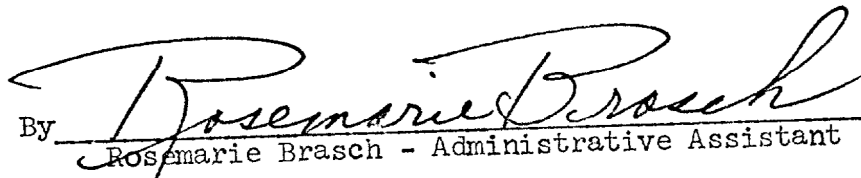
Claim sustained to the extent shown in the Findings.

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Award No. 7999  
Docket No. 7573  
2-BRCofC-FO-'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 18th day of July, 1979.