

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute:

{ System Federation No. 18, Railway Employees'
Department, A. F. of L. - C. I. O.
(Electrical Workers)

{ Boston and Maine Corporation, Debtor

Dispute: Claim of Employees:

1. That under the current agreement, Electrician John D. Pearsall, Jr. was unjustly dismissed from service of the Carrier effective September 26, 1978.
2. That, accordingly, the Boston and Maine Corporation be ordered to restore John D. Pearsall, Jr. to service with all seniority rights unimpaired, vacation rights, sick leave benefits and all other benefits that are a condition of employment unimpaired and compensated for all loss of time during time held out of 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 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 entered Carrier's service on January 4, 1978. Shortly thereafter he was awarded a position by bid as Assistant Combination-man with the following position description: "Reporting to and working under the direction of the Supervisor of Communications, North Billerica. Headquarters at East Deerfield, Massachusetts. This assignment includes road service."

On September 8 and 11, 1978, there arose discussions between the Claimant and several of the Carrier's supervisory personnel concerning an assignment for the Claimant involving work at Bennington, Vermont and Mechanicville, New York. As a result of this, Claimant was the subject of an investigative hearing concerning his alleged "refusal to comply with supervisor's instruction to report for duty at Mechanicville, N.Y. on September 11, 1978."

Following the hearing, the Claimant was dismissed from service on September 26, 1978.

An examination of the hearing record shows that the Claimant did in fact fail to accept the assignment of "road service" involving extended travel from his home location. He had been advised of the assignment by a Leading Electronic Technician, who was acting on behalf of one of the Carrier's Supervisors. When later approached by another Carrier Supervisor, the Claimant again failed to take up the assignment.

The record, however, fails to indicate clearly that the Claimant was given a direct order. Testimony by several witnesses indicated that he was asked to undertake the assignment, but without it being made entirely clear that such was a direct order. On the other hand, Claimant was somewhat indefinite in his defense that he was unaware of the meaning of "road service". His more logical course would have been to accept the assignment and then in due time initiate a claim against the Carrier if he felt he had been treated contrary to the applicable rules.

In view of the indefiniteness of the Carrier's instructions to the Claimant, dismissal is an excessively harsh penalty; yet, as noted above, the Claimant is not without fault in the matter. The Board will order his reinstatement without back pay on the assumption that the Claimant is now fully aware of the requirements of the position he holds and that his continuation in that position is obviously dependent on compliance with assignments as given to him.

Award No. 7643 (Williams) is instructive, although the circumstances therein are somewhat different:

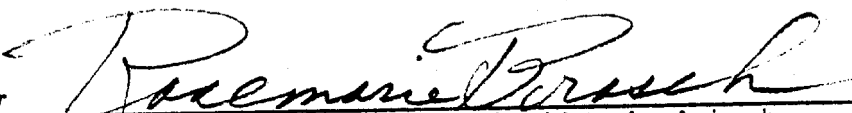
"We have also considered that the primary purpose of discipline is to teach employes - and not to over severely penalize them. Given all the foregoing, we conclude that in Claimant's case, the discipline has now served its purpose and he should now be reinstated to service but with no pay for time lost. We must warn Claimant that should he ever, in the future, commit an offense similar to the one here in the dispute, we will not look so favourably upon a request for reinstatement."

A W A R D

Claim sustained to the extent that Claimant shall be restored to his former position with unimpaired seniority but without pay or retroactive benefits.

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 20th day of February, 1980.