

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman when award was rendered.

Parties to Dispute: (System Federation No. 2, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rule 32(a) of the controlling Agreement, at DeSoto, Missouri, May 17, 18, 19, 20, 23, 24, 25, and 26, 1977, when they unjustly and arbitrarily withheld Carman Kenneth Logan from service with said railroad on those dates account he wore a facial beard.
2. That the Missouri Pacific Railroad Company be ordered to compensate Carman Logan for eight (8) hours at the pro rata rate for each date he was unjustly and arbitrarily withheld from 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 were given due notice of hearing thereon.

Claimant in this case, one Kenneth Logan, is employed as a Carman in the railroad car repair facility of the Missouri Pacific Railroad at DeSoto, Missouri. On May 16, 1977, Claimant, whose duties involved some welding, was informed by supervision that he would not be allowed to work any longer at his job until he shaved off a beard he had been growing. Claimant apparently missed eight (8) days of regularly scheduled work, until returning to the property on May 27, 1977, clean-shaven.

This case, extensively briefed and most capably orally argued in a referee hearing, is evidently considered by both parties to be of major significance. We have, accordingly, studied and most carefully analyzed both the record and the numerous prior cases submitted by the parties in support of their positions. Additionally, we have extensively researched the broader industrial relations literature relevant to the issues raised in this case.

We will dispose first of what we consider, on reflection, to be two peripheral issues raised by the parties:

1). The Carrier argues at one point or another in its various submissions that the Claimant's refusal to shave his beard when ordered to do so was an insubordinate act and that the familiar "obey now, grieve later" principle of industrial relations is applicable to this case. While in some sense, Claimant's initial refusal to shave might be considered as "insubordination", it was not, under the circumstances, an insubordinate act which was at all likely to have an eroding effect on the day-in, day-out maintenance of appropriate and necessary discipline in the work place, or a negative impact on management's legitimate right to have a given work assignment performed now without debate, argument, or other delay. The necessity for getting work done in timely fashion, and the maintenance of industrial discipline is the rationale for the rigorous application of the "obey now, grieve later" principle. As these legitimate goals of any management were surely not negatively affected here, we deem the invocation of the doctrine in this case to be largely inappropriate and not helpful in resolving the underlying basic issue presented here. In any event, management does not, as we shall see, seem to rely on the formal charge of "insubordination" as a justification for insisting that the employee remain out-of-service until he had removed his beard.

2). The Organization asserts that Claimant's loss of eight (8) days of pay for his refusal to appear on the job clean-shaven constitutes the imposition of "discipline" by the Carrier which should have been accompanied by (or preceded by) a hearing under the applicable rules of procedure observed by the parties in discipline cases. Here again, resolution of the abstract issue of whether Claimant's loss of eight (8) days pay following his refusal to shave his beard constituted discipline, or whether his loss was a result of a voluntary, unilateral refusal on his part to comply with Carrier regulations (as contended by Carrier) will not be of much help in deciding the ultimate issue in this case.

It is an inescapable and irreducible fact that Claimant did lose eight (8) days of pay as a proximate, direct result of Carrier's insistence that Claimant not perform his job unless clean-shaven. We must answer then, whether that insistence by Carrier was or was not "reasonable" and whether the insistence on Carrier's part did or did not constitute the exercise by Carrier of a legitimate and normal management prerogative.

There is much testimony on this record, some conflicting, concerning what the announced and publicized rules of the Carrier were regarding the relationship between grooming and safety and whether the implementation or enforcement of rules, regulations, or customs was uniform and non-discriminatory both on the property involved in this case and throughout the Carrier's system.

We are declining in this opinion to pontificate on, or pass judgment with respect to, safety rules and regulations generally regarding grooming which Carrier may have in the past enforced, or may in the future wish to publish and implement as "reasonable". In this one specific instance, however, we find an absence of justification in the record for insisting that Claimant perform his job only in a wholly clean-shaven condition.

Normally, rules, regulations or orders of management are given the benefit of the doubt, and, indeed, great deference where safety is concerned, even where relatively personal matters such as grooming are involved. Here though, in support of Carrier's insistence on Claimant's being clean-shaven, only unsubstantiated assertions are offered to the effect that Claimant's beard was a safety hazard when welding. Pictures of Claimant and narrative in the record establish the probability that the facial hair or beard worn by Claimant was quite close-cropped, apparently not exceeding one half to one inch in length. In the complete absence of any demonstration or hard evidence to the contrary, it would appear that the danger of this beard coming into direct contact with the welding arc, or flame produced thereby, is virtually non-existent. Allusions in the record to the flammability of facial hair and the possibility of this hair being ignited by, or "trapping" gas from the welding operation under the hood or mask which could be ignited by, sparks are unsupported on the record by any test results, unsubstantiated by any proof that such has ever happened in the past and, in general, not the subject of any substantial evidence offered by Carrier.

In short, in the absence of some probability of being established by Carrier with respect to a relatively small amount of facial hair (or quite short beard) being a safety hazard on a welding job, we are constrained to rule that it was not reasonable for Carrier to insist that Claimant be completely clean-shaven before being allowed to perform the job to which Claimant was otherwise entitled.

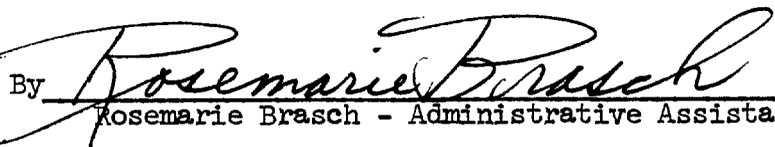
In the opinion of this Board, the mere assertion, standing alone and not supported by facts, that safety is involved is not quite enough to legitimize the order given in this instance. Accordingly, we rule that Claimant be made whole for the eight (8) days loss of pay he suffered while resisting the order to shave.

A W A R D

Claim sustained.

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 11th day of June, 1980.