

The Second Division consisted of the regular members and in addition Referee James F. Searce when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Company (T&L) violated the current agreement when they unjustly dismissed Radio Equipment Installer K. P. Blount from service on May 16, 1979, at the end of his tour of duty.
2. That accordingly the Southern Pacific Company (T&L) be ordered to restore Mr. K. P. Blount to service as a Radio Equipment Installer with seniority rights unimpaired and compensated for all wages and benefits lost, including future wage increases.

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 in this case was classified as a Radio Equipment Installer, a position he had held since February of 1976 after having progressed through a series of positions since his employment as a Gang Lineman in October of 1972.

On January 29, 1979, he bid, was awarded and assumed the position of Radio Equipment Installer -- Position No. 80 -- at Valentine, Texas. He was disqualified for that position on February 2, 1979 -- four days later. He was then sent to El Paso, Texas, to fill an identical position on a temporary basis and did so until February 24, 1979, when the incumbent of that position returned. The Claimant was then instructed to assume Position No. 37 in the same classification at Houston, Texas. The record indicates that he was disqualified from this position after four (4) days. There were apparently no other Radio Equipment Installer positions open and the Claimant was advised he could take one of two (2) positions -- one with Line Gang No. 1 at Lafayette, Louisiana or the other with Gang No. 2 at Houston, Texas. He was apparently supposed to do so by March 14, 1979. Either such position would have resulted in a demotion for the Claimant and, according to the Organization, would have required that he give up a bid position -- that of Radio Equipment Installer -- in order to accept a non-bid one on the Gang. The Claimant failed to report to either job. As a result, the Claimant was suspended

for twenty-one (21) working days which ran through April 30, 1979. He was instructed, by letter dated April 2, 1979, that post the suspension period, he was to report for duty on either one or the other of the two Gangs aforementioned, doing so as of May 1, 1979; this directive was qualified by the statement "if such a vacancy exists at that time". Failure of the Claimant to do so resulted in a charge by letter dated May 3, 1979 of "being insubordinate", "failure to report for duty as directed" and "being absent from (his) employment without proper authority from May 1, 1979 through (May 3, 1979)". An investigation was held May 15, 1979 and by letter of the day following the Claimant was discharged on the charge of violations of Rules 801 and M810. A grievance was filed protesting the disqualification of the Claimant and the subsequent adverse actions taken against him. The Organization cites Rules 13 and 22 as the basis for the Claim.

The Carrier argues that, if the Claimant had felt his disqualifications and subsequent assignments to a Gang position were in error, he should have taken the assignment under protest and grieved such required action. The Organization asserts that he could not properly be assigned to a position, and that instead he would have to fill such a job on a vacancy and then by bid, and that failure to do so would be tantamount to abandonment of his bid position -- that of Radio Equipment Installer. The Claimant asserts that the Carrier's disqualification of him represents a violation of the "fair trial" requirement of Rule 13.

This Board finds error on the part of the Carrier in its disqualifying action; it also finds error by the Claimant thereafter. Given the fact that the Claimant had held the position of Radio Equipment Installer for some three (3) years prior to his bidding and acquiring Position No. 80 at Valentine, we find a four (4) day trial period inadequate to meet the requirements of Rule 13 which states:

"When new jobs are created or vacancies occur in the respective classes, the oldest employees in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. If a Class A or B position is bulletined and there are no applications from Class A or B linemen, any application from a qualified Class C lineman will be considered. All vacancies or new jobs created will be bulletined."

and

"An employee exercising his seniority rights under this rule will do so without expense to the Carrier; he will lose his right to the job he left, and if after a fair trial he fails to qualify for the new position, he will have to take whatever position may be open in his craft."

His skills in his preferred position were apparently adequate in that he filled a temporary position after such disqualification. We find that his subsequent disqualification on Position 37 at Houston, after only four (4) days trial was likewise inadequate to meet the intent of Rule 13. But while we can appreciate the Claimant's sense of dissatisfaction over such apparent abrupt disqualifying actions, we conclude that his refusal to accept a Gang position

at Houston was ill-advised. We find his asserted rationale that he was somehow "abandoning" the Radio Equipment Installer position unsupported by the Agreement; indeed, the second provision of Rule 13 cited heretofore makes manifest that disqualified employees will "have to take whatever position may be open in his craft". Essentially, we find no reason to conclude that reference to "craft" limits consideration only as among Radio Equipment Installers. Having found error on the Claimant's part, however, we note that this is not the typical situation where the "obey and grieve" rationale is applied. The grievant, apparently a qualified Radio Equipment Installer for more than three (3) years, seemingly would need not qualify for the same position on bid. He was awarded such a position in Valentine, Texas, was then sent to El Paso and presumably performed such work on a temporary assignment. He was then moved to Houston, Texas again disqualified in four days and told to go to either Louisiana or Houston. There is, of course, no evidence that a Gang position was available at one or the other or both locations, but presumably it was. To "obey" the order the Claimant would potentially have to make yet another move when it was evident he disputed the first disqualification which required his relocation to Valentine. As noted heretofore we find reason to conclude that the Carrier violated Rule 13 when it disqualified the Claimant from Position No. 80. As such, it was in error ab initio and from that point forward.

As to the Carrier's finding that the Claimant was insubordinate by his refusal to accept the Gang position, such a charge is without basis and misplaced. And while we find some merit in the charge of error of the Claimant to accept a Gang assignment, we also find an unusual circumstance which mitigates discipline for an offense which is obviously a serious one for which removal is usually justified.

Without delving into details of the Organization's charge that the hearing and hearing officer were biased and prejudiced, it is enough to say that the record supports the conclusion that it was far from the model of an objective tribunal.

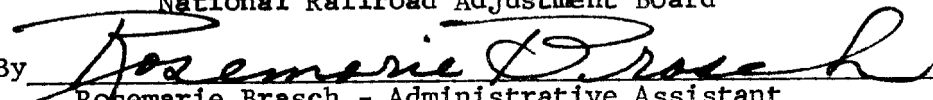
We shall order the Claimant reinstated to the position of Radio Equipment Installer with full seniority and compensation at the appropriate straight-time rate from his date of suspension and removal, until his return to duty to a location which cannot unreasonably be refused by him, less any and all compensation he may have earned from other sources during that period. The Claimant may not deny the Carrier access to such records and an intentional withholding or understatement of such earnings will result in a proper denial of the right to return to duty or his removal if discovered after such return to duty. This order shall be promptly implemented.

A W A R D

Claim is sustained as set out in the 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 15th day of April, 1981.