

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 8768
Docket No. 8606
2-CR-MA-'81

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist J. L. Barnes to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist rate of pay.
2. That Machinist J. L. Barnes be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and was lost during this period, in accordance with Rule J-1 (e) of the prevailing Agreement which was effective April 1, 1976.

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, machinist James L. Barnes, was assigned to the tool room at the Collinswood, Ohio, Diesel Terminal. On October 16, 1978, he was removed from service for insubordination, use of abusive language, and conduct unbecoming an employee. His dismissal followed a hearing into the matter on October 31, 1978. Appeals to carrier were exhausted and the matter now comes before this Board.

The stenographic notes of the hearing are part of the record of this case. A review of those notes reveals that claimant was not denied any of his substantive and procedural rights and that he was afforded a full and fair hearing.

Claimant was ordered to take a box of air compressor valves out of his assigned work area, the tool room. He refused the orders of two superiors to do so, using abusive language. While being escorted to the office of the supervisor, he kicked a broom, which narrowly missed the general foreman. Claimant did not dispute the fact that he disobeyed an order, but denied that he used abusive language or that he meant to hit anyone with the broom. He claimed that his refusal to obey the order was based on his fear of being disciplined for leaving his assigned work area.

A careful reading of the record shows that carrier had sufficient basis to make the determination it did. Claimant had been disciplined for being absent without permission before. Had he left his assigned work area in the present case, however he would have done so under a direct order. Therefore, his argument that he would have been disciplined for leaving the area is strained and cannot prevail.

This Board has often stated that where an employee has a dispute with management and health and safety are not at issue, the employee has the obligation to execute the task as ordered and to file a grievance afterwards. Clearly, carrier has the right to expect obedience from its employees. This Board finds sufficient evidence to support carrier's disciplinary action in this case. As stated in the past, the Board will not substitute its judgment for that of carrier. The claim of the organization is therefore denied.

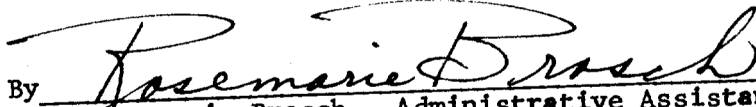
A W A R D

Claim denied.

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 30th day of September, 1981.