

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

1. That the Chesapeake and Ohio Railway Company violated the current agreement when it unjustly dismissed Electrician Homer F. Pugh from service on March 24, 1979.
2. That accordingly the Chesapeake and Ohio Railway Company be ordered to restore Electrician Homer F. Pugh to service with seniority unimpaired and compensate him for all time lost subsequent to and including March 24, 1979, and all other benefits he would have had if he had remained in 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 was employed at Carrier's Raceland, Kentucky, car shop. He was assigned as an electric crane operator, hours 3:00 P.M. to 11:00 P.M., and had been in Carrier's service one year and nine months.

On March 28, 1979, claimant was instructed to attend investigation at 10:00 P.M., April 5, 1978:

"You are charged with insubordination in that you failed to obey instructions of Departmental Foreman C. C. Thomas and General Foreman Joe Johnson at approximately 3:00 P.M., on March 24, 1979, in which you refused to operate overhead crane as instructed. Further, failing to leave company property when you were advised that you were relieved of duty and instructed to remove yourself from Raceland Car Shop property.

Arrange for representative and/or witnesses, if desired."

The charge was signed by W. B. Chellis, General Plant Manager.

The investigation was conducted as scheduled. Claimant was present throughout the investigation and was represented. A copy of the transcript of the investigation has been made a part of the record. We have reviewed the transcript and find that none of claimant's substantive procedural rights was violated. The investigation was conducted in a fair and impartial manner. On August 30, 1979, claimant was notified of his dismissal from service.

There was substantial evidence in the investigation to support the charges against the claimant. The record shows that on March 24, 1979, it was necessary to reassign the employees working in the "Burner Shop" to other areas to meet shop requirements. About 3:05 P.M. all such employees were instructed to report to the Erecting Shop. Gang Foreman Chambers so testified in the investigation. Claimant did not go to the Erecting Shop. Chambers also testified that Departmental Foreman Thomas told him that he could not locate claimant Pugh.

Departmental Foreman Thomas testified that he had instructed the Burner Shop to send all of their people to the Erecting Shop; that there was need for a crane operator and none was available for the east crane at the time; that he was advised by General Foreman Johnson that claimant Pugh was then in the West crane, but was not the assigned operator of the West Crane. Thomas stated that he went to the West crane and told claimant to get out of the West crane, which had an operator. While claimant contends that he could not hear Thomas' instruction, Thomas stated that claimant told him "to get the extra crane operator", and that such statement was made to him while claimant was in the West crane cab. Thomas testified that he told claimant Pugh that he wanted him for the East crane; that claimant climbed down from the West crane and started to the Electric Shop; that he (Thomas) and General Foreman Johnson started to the Electric Shop, met claimant Pugh and asked Pugh if he understood what he told him to do, and claimant Pugh replied "I don't operate that way, get the extra man". General Foreman Johnson then told claimant Pugh that he was relieved of his duties and for him to remove himself from Company property; that Claimant Pugh informed Johnson "that he was not going anywhere, he was going to see his Committeeman".

General Foreman Johnson's testimony generally verified the testimony of Departmental Foreman Thomas. Claimant's refusal to leave the property when instructed by General Foreman Johnson resulted in a call being made for a Special Agent to assist in his removal. The Special Agent testified that claimant gave him no trouble.

While there were conflicts between the testimony of claimant and Supervisory personnel, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses.

Whether claimant thought that the instructions of the Departmental Foreman were correct or not, he should have complied with them and complained later if he considered that he was being mistreated or that his Agreement rights were being violated. His actions, however, constituted insubordination. It has previously been held that:

"Insubordination does not consist solely in the flat refusal to perform work." (Third Division Award 22638, Second Division Award 7128.)

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Award No. 8846
Docket No. 8783
2-C&O-EW-'82

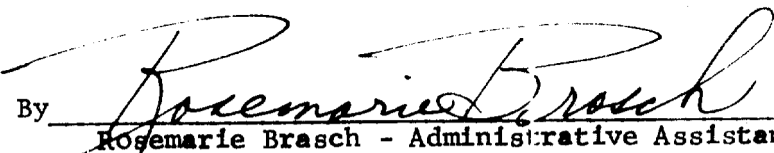
A W A R D

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 6th day of January, 1982.