

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  
( Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Union Pacific Railroad Company violated the current agreement when Electrician R. Hatfield was unjustly dismissed from service on July 17, 1979 at Council Bluffs, Iowa.
2. That the Union Pacific Railroad Company violated the current agreement when Electrician R. Hatfield was not afforded a fair and impartial hearing.
3. That Electrician R. Hatfield be compensated for time lost between the dates of July 17, 1979 and January 19, 1980, with all seniority rights and benefits unimpaired and be compensated for all wages lost from the date of his dismissal up to the date of his reinstatement.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The claimant was employed by Carrier as an electrician at Council Bluffs, Iowa. On June 8, 1979, he was notified by the General Car Foreman:

"Please report to the Office of General Car Foreman at Council Bluffs, Iowa, 9:30 AM, June 13, 1979, for investigation and hearing on charges that you failed to comply with special instructions from your Supervisor June 7, 1979, approximately 8:45 AM. You are also charged with being absent without proper authority from 9:00 AM to 4:00 PM, June 7, 1979, and also being quarrelsome during your duty June 7, 1979. Charges are in violation of General Rule B and General Regulations 700 and 702 of Form 7180, Rules and Instructions of the Motive Power and Machinery Department.

The investigation and hearing will be conducted in conformity with Rule 37 of the Schedule Agreement effective November 1, 1976, between the Company and System Federation No. 105 and you are entitled to representation as provided therein.

You may produce such witnesses as you may (may) desire at your own expense."

The rules referred to in the letter of charge read:

"B. Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority for an explanation."

"700. Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations."

"702. Employees must attend to their duties during the hours prescribed, reside where required by the management, and comply with instructions from proper authority. They must not absent themselves from duty, exchange duties with or substitute others in their place, nor engage in other business without proper authority."

The reading of newspapers, books or periodicals or the playing of games while on duty, is prohibited."

At the request of the Organization, the investigation was postponed and conducted on June 26, 1979. Claimant was present throughout the investigation and was represented. At the beginning of the investigation, the Local Chairman entered two objections. One was that claimant was charged under obsolete rules on the ground that Form 7180 had been superseded by Form 7908 effective October 1, 1974. The second objection was that the officer conducting the investigation was the same officer who signed the charge. The conducting officer stated that the objections would be noted. So far as the second objection about the same officer conducting the investigation who signed the letter of charge is concerned, such procedure has been upheld by numerous awards of the Board. So far as Form 7180 is concerned, in the handling of the dispute on appeal, the Carrier's Chief Mechanical Officer advised the General Chairman:

"2. It is contended that Electrician Hatfield was charged with an obsolete rule from Departmental Rule book Form 7180, Rules and Instructions of the Motive Power and Machinery Department. As a matter of information to you both Forms 7908, Rules Governing Duties and Department of Employees, Safety Instructions and Use of Radio, and Form 7180 are currently in effect and there have never been any instructions issued to support your

contention that Form 7908 supercedes Form 7180. In this respect, there is no indication in the transcript of investigation which would indicate that your organizational representatives did not have sufficient evidence to prepare their defense for the charge of Rule 702, which was assessed against Mr. Hatfield. Therefore, as indicated above, Rule 702 contained in Form 7180 is still in effect." (Emphasis in original).

In the investigation representatives of the Organization attempted to enter an "affidavit" from a witness John Blunk, who was on vacation at the time. This was not permitted by the hearing officer. We consider that the hearing officer was in error in this respect. Many awards have upheld the introduction of written statements into investigations without the writers being present. However, in handling the dispute on the property a statement (not an affidavit) signed by John D. Blunk was included in the record.

In the investigation Relief Foreman Graffeo stated that claimant was assigned to work under his supervision; that at the beginning of the shift on June 7, 1979, he told claimant that he would be working under Temporary Foreman Smith. At about 8:45 A.M., a rather heated discussion ensued between Smith and the claimant concerning work on cars. Smith testified that he told claimant two times to return to work; that claimant persisted to argue, and when he told claimant the second time to go to work, claimant stated that he would go home, and departed. Smith testified further:

"I told him (claimant) to return to his car. He kept arguing and I told him the second time to return to his work, and then he said 'I'm going home' and then I said 'you might as well for all the good you are doing.'"

Relief Car Foreman Graffeo testified that while supervising work to be done on a Senior Officers Special, claimant Hatfield walked up to him and told him (Graffeo) that he was going home; that Smith had told him to go home, and that he (Graffeo) told claimant that if he was going home, to make his time card out before he left. Graffeo also stated that he did not give claimant permission to go home; that claimant did not request his permission to go home; that he later asked Smith if he had given claimant permission to go home and Smith said that he had not; that it was the responsibility of claimant to obtain permission from his supervisor if he was going to absent himself from duty. Graffeo also stated that on June 7, 1979, claimant was not assigned other duties besides those of his normal assignment.

There was considerable conflict between the statement of the claimant and the statements of Temporary Foreman Smith and Relief Car Foreman Graffeo. It is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Those are the functions of the hearing officer.

Near the close of the investigation, the Local Chairman contended that claimant was not given a proper precise charge. We consider the charge sufficient.

precise to enable the claimant and his representatives to prepare a defense. It stated the alleged violation, the time, date, and place, and the rules involved. The charge met the requirements of the Agreement.

While there may have been some irregularities on the part of the hearing officer, such as not admitting the statement of electrician Blunk to be entered, we do not consider the irregularities to be of sufficient significance to void the entire proceedings.

Claimant was dismissed from the service on July 17, 1979 and reinstated on January 19, 1980 with the understanding that he would not be compensated for time withheld from service until such time as the issue was resolved either on the property or by the Board.

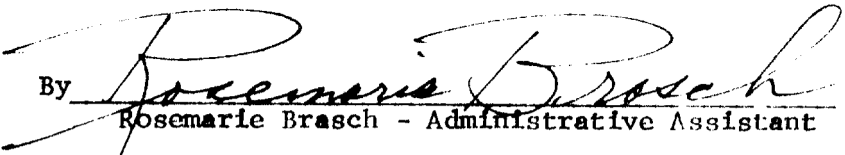
Based upon our study of the entire record, we are convinced that claimant refused to comply with instructions of his superior on two occasions and that he left his assignment without permission of his foreman. Claimant should have complied with instructions and handled through the grievance procedure if he considered that he was mistreated or his agreement rights violated. Claimant was guilty of insubordination, which is a serious offense, often resulting in permanent dismissal. It is well established that in discipline cases this Board will not substitute its judgment for that of the Carrier, unless it is established that the Carrier acted in an arbitrary, capricious or unreasonable manner. The discipline administered by the Carrier, which amounted to about six months suspension, was not arbitrary, capricious, or in bad faith.

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.