

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer Willie A. Turner was unjustly dismissed from service of the Carrier following investigation held on October 17, 1979.
2. That, accordingly, the Carrier be ordered to make the aforementioned Willie A. Turner whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of 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 employees 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.

The Claimant was formally charged with failure to comply with verbal instructions from his foreman and further refused to comply with the same instructions from the general foreman. An investigation was properly held, the Claimant was found guilty of the charge, and dismissed from service.

Claimant argues that a prior Carrier memorandum assigned the type of work he was instructed to perform to employees having different job titles, and that therefore, he was improperly assigned the work. The memorandum in question was advisory, having a measure of discretion to the foreman in charge of the responsibility covered. Even if Claimant had grounds to believe that he was being assigned work improperly, it is well recognized by this Board that the employee's duty in such situations is to comply with the directions first and grieve later. Second Division Award No. 5167 states clearly the position of this Board:

"The correct procedure was for claimants to comply with (the foreman's instructions and thereafter, if they desired to do so, to test the validity through the orderly channels of the grievance machinery. Any contrary procedure that would permit each employee to determine whether or not a supervisor's instructions are proper would make for chaos and cannot be sanctioned."

Claimant further states that the job he was instructed to do had been previously performed, while the record indicates that he had no knowledge of this fact and that he had not even checked as to whether or not this was true before he refused to comply with the foreman's and general foreman's instructions. Assuming that Claimant's contention was correct, this Board has consistently held that it will not substitute its judgement for that for the hearing officer's, absent a clear showing of arbitrary, capricious or unreasonable action on the part of the hearing officer. The hearing officer was obviously present and able to observe the conduct and demeanor of all witnesses. This Board will not substitute its judgement for that of the hearing officer.

As to the Organization's claim that dismissal was inappropriate, it is clear that proven insubordination is a serious offense and will support discipline of dismissal. This Board has ruled in Award No. 3894:

"Orderly, efficient, and safe operations among all employees is seriously threatened when insubordination goes unpunished."

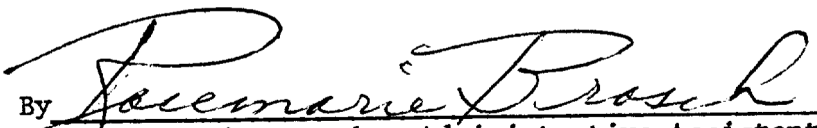
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April, 1982.