

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{
{ Chicago and North Western Transportation Company

1. Carman Jack Jalove was unjustly dismissed from service on April 4, 1979.
2. Carman Jack Jalove was erroneously charged with insubordination of March 22, 1979.
3. That the Chicago and North Western Transportation should reinstate Carman Jack Jalove, and compensate him in the amount of eight hours pay per day dating from April 4, 1979, until such time as he is returned to service; plus any benefits to which he is entitled in accordance with Rule 35.

Claimant, Jack Jalove, is a billwriter, who has worked for the Carrier since November 2, 1977, at its Proviso, Illinois, facility. On March 22, 1979, Claimant reported to work at 3:00 P.M. Between 3:30 and 4:00 P.M., he was sent to Spot Rip and reported to the foreman, who assigned him to drive a fork truck because of a manpower shortage. Shortly thereafter, Claimant told foreman he did not have to drive the fork truck, and he could go home if he wanted to. He did, however, drive the fork truck until 6:45 P.M. At that time, he was told to go down and open the switches. Claimant then went to speak to the Acting General Car Foreman, who was exiting the machine shop. Claimant called the Acting General Foreman over and stated, "I am not going to drive a fork lift after lunch". Asked why, Claimant responded, "I am a billwriter". He was told he had to drive the fork truck because of a shortage of men. Claimant again said, "No". Claimant then proceeded to open the switch as instructed. Upon returning to the Foreman's office, the Acting General Foreman attempted to explain the manpower shortage and the fact he did not want to give any carman a hassle as far as his job is concerned. Claimant was told he was needed to drive the fork truck. He was then told to sit in the lunchroom. The Spot Rip Foreman was called, and together with the Acting General Foreman,

they approached Claimant. The Acting General Foreman again told Claimant he had to drive. Claimant said, "No". He was told he was being insubordinate and was, thereafter, pulled out of service.

The investigation was held on March 30, 1979, as scheduled, and by letter of April 4, 1979, Claimant was advised of his dismissal from service.

The Organization claims the Carrier has failed to prove the charge of insubordination. A direct order was never issued. Insubordination was assumed by the Acting General Foreman, but he could not be sure until Claimant's lunch period ended.

The Board has reviewed the transcript, and we conclude the Claimant was given clear instructions to drive the fork truck. Claimant's refusals were multiple. We note that Claimant initiated conversation with the Acting General Foreman before he opened the switch. The assertion a direct order cannot be issued during a lunch period under such circumstances is without merit.

We have examined the Board's well settled position that employees must comply with instructions and grieve later, except where a real safety hazard is involved. No such exception is suggested by the actions and statements of the Claimant.

The Board finds sufficient evidence supporting Carrier's finding of insubordination. The Claimant simply did not want to follow instructions. There existed no basis for his refusal. Instructions and directions addressed to employees are no less a direct order because they are not prefaced by "this is a direct order". The assignment of Claimant to perform the work was proper.

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 22nd day of June, 1982.