

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( Northwestern Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Maintenance of Way Department Electrician E. D. McConnell was unjustly treated when he was dismissed from service on October 28, 1978, for alleged violation of portions of Rule 801 of the General Rules and Regulations of the Northwestern Pacific Railroad Company, Redwood Empire Route, Willits, California. Said alleged violation occurring on September 14, 1978.
2. That accordingly the Northwestern Pacific Railroad Company be ordered to:
  - (a) Restore Electrician E. D. McConnell to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital, medical insurance, group disability insurance, railroad retirement contributions, and loss of wages to include interest at the rate of six percent per annum.

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.

Claimant, an electrician with ten years of service, was charged with violating Carrier Rule 801. After an investigation held on October 19, 1978, the Carrier determined that Claimant had been both insubordinate and quarrelsome on September 14, 1978. Claimant was dismissed from service on October 28, 1978.

On September 14, 1978, Claimant was part of a large crew which was working hard and long hours to repair fire damage on a mainline tunnel. During Claimant's twelve hour shift, the Oregon Division Electrician arrived on the job site. At that time, Claimant was busily engaged taping thermocouple wire to the airplane cable. He was introduced to the Division Electrician. The Division Electrician immediately ordered Claimant to alter the way he was taping the wire. Claimant continued to perform the task as he had prior to the Division Electrician's arrival.

At this point, the record contains several sharp conflicts between Claimant's rendition of the events and the Division Electrician's testimony. First, Claimant stated he did not realize that the Division Electrician was a supervisor and so Claimant truly believed he did not have to follow the Division Electrician's instructions. Other witnesses including a motorcar repairman testified that the Division Electrician was wearing a white helmet (which was the distinctive symbol of a supervisor). Second, Claimant testified that the Division Electrician forcibly seized Claimant's shirt lapels and yelled profanities at him. The Division Electrician admitted that he touched Claimant, but said that he merely put his hand on Claimant's shoulder in an attempt to calm him down. Third, Claimant asserted that he did not have sufficient tape to comply with the order. The Division Electrician emphatically stated that Claimant did not raise this excuse at the time of the incident. Fourth, according to the Division Electrician, after Claimant disobeyed his order, Claimant became very belligerent and said he did not care if he was taken out of service. Claimant admitted he was angry and may have said he wanted to get away from the job, but denied the allegation that he was quarrelsome.

It is not the province of this Board to resolve conflicts in testimony and credibility disputes. Third Division Awards No. 22638 (Eischen) and No. 21556 (O'Brien). When confronted with direct conflicts in testimony, this Board must leave credibility resolutions to the hearing officer. The Carrier could reasonably decide to attach greater weight to the Division Electrician's testimony as opposed to Claimant's version of the events. Our analysis is restricted to reviewing the record and evaluating the evidence to ascertain if the Carrier presented substantial probative evidence to justify a finding that Claimant committed the charged offenses.

Claimant, by his own admission, refused to comply with the Division Electrician's order. Since the supervisor was wearing a white hard hat, Claimant should have complied. The Carrier could also rely on the Division Electrician's testimony (as well as the testimony of other witnesses) to find that Claimant reacted in a belligerent and hostile manner. Thus, Claimant violated Rule 801.

While we find substantial evidence demonstrating that Claimant committed insubordination, this Board agrees with the Organization's contention that there are mitigating circumstances which justify a reduction in the discipline. Claimant had accumulated more than ten years of fine service. At the time of the incident, Claimant had been working very hard under adverse conditions. Tempers were easily aroused. Both Claimant and his supervisor were responsible for escalating a minor incident into a serious confrontation. The Division Electrician's attempts to pacify Claimant (by putting his hand on Claimant's shoulder) actually aggravated an already tense situation. Also, because the Division Electrician decided to quickly remove Claimant from service, the record is unclear regarding whether or not Claimant's insubordination lasted any more than a few moments. See Second Division Award No. 8087 (Marx).

Therefore, we conclude a six-month suspension was the maximum penalty the Carrier could reasonably have imposed in this case. Claimant shall be reinstated with his seniority unimpaired and with back pay, but only for the period subsequent to March 14, 1979. Any outside earnings and unemployment compensation Claimant

received (after March 14, 1979) will be deducted from the back pay award. Claimant's request for interest and other retroactive benefits is denied. The Carrier has argued that its back pay liability should terminate when it offered to reinstate Claimant in April, 1980. However the offer was on a leniency basis, which this Board cannot review. In addition, the Carrier apparently withdrew the offer sometime thereafter. Thus, in this particular case, the Carrier's back pay liability was not limited.


A W A R D

Claim sustained in accordance with the Findings.

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 30th day of March, 1983.