

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the controlling Agreement, the Carrier improperly dismissed Carman Emil R. Pulse, from the service of the Carrier, under letter dated July 5, 1979, after investigation, held on Friday, June 22, 1979.
2. That accordingly, the Carrier be ordered to reinstate the Claimant, with his seniority, vacation, hospital and insurance rights unimpaired, and also that he be additionally compensated at his applicable hourly rate of pay, for all time lost.

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, a Carman on the trailer-flat car ramp, reported to work at the designated time on June 7, 1979. When Claimant's shift started, the Assistant Car Foreman instructed Claimant to lower the ramp and untie trailers on Track Two. At about the same time, the General Car Foreman directed Claimant to put on his hard hat. As Claimant walked from the locker room toward the yard, the General Car Foreman repeatedly told Claimant that he would have to put on his hard hat before he went to work. Claimant did not put on the hard hat and he did not verbally respond to the General Car Foreman's instructions. Claimant walked past Track Two and eventually went into the Trailer Agency Office.

At an investigation convened on June 22, 1979 to determine if Claimant had committed insubordination, Claimant testified that the General Car Foreman shouted at him (and used profanity) when the Foreman was telling him to wear the hard hat. Claimant stated that he did not wear the hat because he noticed the hat was defective. Also, Claimant testified that the Foreman did not give him an opportunity to explain why he was not wearing the hard hat.

We have reviewed the notice of charges and the transcript and we conclude

that Claimant was provided with a fair hearing. Though the Organization claims the investigation was not held promptly after Claimant was withheld from service, the record reveals that the investigation was postponed at Claimant's express request. The Carrier cannot be penalized for hearing delays resulting from its reasonable accommodation with Claimant's request.

Turning to the merits, there is substantial evidence in the record that Claimant committed two distinct acts of insubordination on June 7, 1979. Claimant not only failed to wear the hard hat in accord with the General Car Foreman's clear instructions, but he also disobeyed the Assistant Car Foreman's order to report to Track Two. The Organization has argued that Claimant was not guilty of insubordination because there is no evidence he orally refused to follow any order. However, since Claimant completely ignored the General Car Foreman's repeated orders to wear his hard hat and since he walked right past Track Two, Claimant obviously defied and intentionally disregarded the directives issued by his two supervisors. If Claimant's hat was defective, Claimant should have pointed out the defect at the time of the incident instead of remaining completely silent.

Furthermore, aside from Claimant's unsupported assertions, the record does not contain any probative evidence showing that the General Car Foreman was harassing Claimant. The Foreman was legitimately trying to insure that Claimant wear his protective headgear when he entered the work area. Since Claimant ignored the Foreman's instruction, the Foreman could raise his voice to make certain Claimant heard the order.

We note that the Carrier also found that Claimant had falsified his time card on June 7, 1979. However, this Board need not consider the alleged time card infraction because Claimant's two insubordinate acts were serious offenses which justify the Carrier's decision to dismiss him from service.

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 13th day of April, 1983.