

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(AFL-CIO
(
(Atchison, Topeka & Santa Fe Railway Company

Dispute: Claim of Employees:

1. That Carrier improperly suspended Machinist W. C. Moran (hereinafter referred to as Claimant) from service on March 24, 1980, and subsequently dismissed Claimant on April 21, 1980, as a result of investigation held on April 2, 1980.
2. That Carrier be ordered to compensate Claimant for all lost wages incurred from March 24, 1980 to date of restoration to Carrier service and will all rights and fringe benefits restored in full.

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.

On March 24, 1980, the Claimant was notified that he was suspended from service pending formal investigation to determine the facts in connection with his role concerning the chaining of a door in the area in which he worked and his failure to complete his shift.

Subsequent to the investigation, the Claimant was notified that he had been found guilty of violation of various Carrier rules and was dismissed from the service.

There are essentially two elements to the incident which resulted in the dismissal of the Claimant. The first element pertains to alleged failure to follow the instructions of the supervisor. The Board finds, by the Claimant's own admission that he understood what was asked of him, namely to remove a chain from a door, and he refused to do so. It is well established that under certain highly restricted conditions and circumstances, such as imminent danger to life and limb, the strict compliance with an order may lose its importance. Such was not the case before us, however, there were no mitigating factors presented in the record which would

absolve the Claimant from refusal to comply with a legitimate order.

The second element pertains to the Claimant's leaving the property without permission before completion of his shift. The Claimant acknowledged his action and, therefore, the factual aspects of this element used by the Carrier to arrive at this penalty are not in doubt.

Given the facts and circumstances, evidenced by the record before us the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1983.