

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

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( System Council #11, AFL-CIO  
( Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That Laborer Ronald Hall was unjustly relieved of duties on September 30, 1981 from the Missouri Pacific Railroad Company and later dismissed from service in October.
2. That accordingly, the Missouri Pacific Railroad Company compensate Laborer Ronald Hall at his pro rata rate of pay for each work day beginning September 30, 1981 until he is reinstated to service and in addition to that receive all benefits according to any other employee in active service, including vacation rights and seniority rights unimpaired. Claim his dependents and hospital benefits for himself, pension benefits including railroad and unemployment insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Hall an additional sum of 12% interest per annum compounded anniversary date of said claim.

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 employes 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.

After an investigation which was held on October 20, 1981, Laborer Ronald Hall, the Claimant, was dismissed from service due to his failure on September 30, 1981 to comply with his Foreman's instruction to remove headphones while performing his duties and being quarrelsome to the General Foreman when he engaged in an argument concerning the instruction to remove the headphones. The Claimant had been employed by the Carrier since 1972.

The Organization contends that the Claimant fully intended to comply with his Foreman's instruction but since there were several Supervisors who issued orders to the Claimant, "almost simultaneously", he was in effect, confused and displayed some hesitation as to which order he would first comply with. Moreover, the Organization contends that the "responses" of the Claimant to the General Foreman "are\*\*\*not inappropriate in an industrial setting", given "the norms in such a setting and the use of shop talk".

After carefully examining the evidence in the record, the Board finds that the Claimant reported to his work area on September 30, 1981 with headphones attached to a radio and refused to remove them when he was instructed to do so by his Foreman. Indeed, when the Claimant was brought to the office of the General Foreman he was again instructed to remove the headphones. Not only did the Claimant again refuse to remove the headphones, but he became argumentative and loud. The failure to follow a supervisor's instructions has an additional dimension in this case which reinforces the gravity of the offense. It is the Carrier's responsibility to ensure safety in the work area. The wearing of headphones attached to a radio by an employee is a safety hazard not only to the Claimant himself but also to the employees in the area. Thus, by refusing to remove the headphones the Claimant failed to comply with instructions relating to safety which is of paramount concern in the work place.

In addition, a review of the Claimant's employment record indicates two (2) conferences and a thirty (30) day deferred suspension due to his failure to comply with rules or instructions.

However, the Board has concluded that in light of the offense committed on September 30, 1981 and in light of his work history, the penalty of dismissal is excessive. This is not to minimize the seriousness of the Claimant's conduct on September 30, 1981 and to point out that if he does not change his attitude and conduct, notwithstanding his more than eight (8) years of service, the only recourse will be dismissal.

Accordingly, the Board has concluded that the Claimant is to be reinstated with seniority unimpaired but without pay or other benefits for time lost.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Deyer Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1984