Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9873
SECOND DIVISION Docket No. 9756
2-CR-FO-'84

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That, in violation of the current agreement, Laborer J. A. Mills was unjustly dismissed from service of the Carrier following trial held on September 22, 1980.

2. That, accordingly, the Carrier be ordered to make the aforementioned J. A. Mills whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten [10%] percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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.

The Claimant is assigned as a Laborer in the Collinwood Diesel Terminal, Collinwood, Ohio. The Claimant, following a trial on September 22, 1980 was dismissed from service after having been found guilty of the following offense:

> "Insubordination in that you refused to comply with a direct order issued by Shop Superintendent T. Lloyd on 9-7-80 at approximately 3:30 P.M."

The record of the hearing indicates that the Shop Superintendent on September 7, 1980, found that he needed a hostler helper to work the Pad. He testified:

"On 9-7-80 we needed a hostler helper to work the Pad. I informed Mr. McGroder, the outside foreman, that we needed to send a hostler helper to the Pad. He came into the office with Mr. Mills and Mr. Mills asked me if I got him to go the Pad. I exlained to Mr. Mills I needed a man to go to the Pad and that he was only qualified man I had. He informed me his job was bid as east end. I told him I know that. I needed a man at the Pad. I want him to go work the Pad. Mr. Mills then asked me what are you going to do with the east end job. I told him that the east end job would not be his concern. I needed him at the Pad. He told me his job was at the east end. I told him once again, Mr. Mills go to the Pad to work the hostler helper job. He then said he was not qualified. I told him he was the most qualified man I had and that Mr. Richardson, acting General Foreman that day, would be over there if he had any problems. I then told him one more time to work the hostler helper at the Pad. He said no, I am working the east end. At this time, I informed him he was out of service. Approximately 3:30 p.m."

The exchange between the Shop Superintendent and the Claimant was observed and overheard by the Foreman and the Acting General Foreman. The fact that the Claimant had originally refused the assignment to the Pad by the Foreman was the event hat brought them both to the Shop Superintendent's office.

The Claimant did not testify on his own behalf. The Organization "speaking on his behalf" noted the Claimant "realizes at this point he was grossly wrong" but he did not "refuse duty". The Organization denied the Claimant ever meant to be insubordinate.

The Claimant's argument that it was never explained to him why he had to change his assignment tends to avoid the fact that he was directed to "work the Pad" by his supervisor. The Claimant's refusal to comply constitutes "self help" and does not provide sufficient grounds (e.g. safety) that the order not be followed. The directive was given not once, but several times. Each time, the Claimant did not comply. Accordingly, he is guilty of the charge of Insubordination.

The Claimant's past discipline record was reviewed. It indicated:

Date	Discipline	Offense
3-7-78	Letter of Warning	Playing cards on duty
2-2-79	5 Days Suspension	Excessive Absenteeism
5-20-80	5 Days Suspension	Leaving assigned work location
6-9-80	10 Days Suspension	Absenteeism on May 11, 16, 17, 1980
6-9-80	15 Days Suspension	Absenteeism on May 25, 27, 30, 31, 1980
6-9-80	30 Days Suspension	Absenteeism on May 2, 9, 10, 1980
7-18-80	Reprimand	Absenteeism on June 13, 17, 21 28, 1980

If the Claimant felt his "bidding rights" were being violated, his proper course of action was to seek relief and redress through the procedures established by the Parties for such incidents. This he chose not to do.

Given the entire record, this Board finds the dismissal was warranted.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of April, 1984