

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That the action of the Consolidated Rail Corporation (Conrail) in suspending and subsequently dismissing Electrician Daniel Mitchell commencing October 5, 1980 did violate the Agreement between the Consolidated Rail Corporation (Conrail) and International Brotherhood of Electrical Workers effective May 1, 1979, in particular, Rule 6.
2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to reinstate Electrician Daniel Mitchell to the service of the Carrier with all seniority rights, vacation rights, health and welfare rights and all other rights accruing to his position. In addition he be paid for all lost wages at the rate of time and one-half commencing October 5, 1980 until date of reinstatement, both dates inclusive.

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.

Claimant was dismissed from the service of the Carrier on October 24, 1980, subsequent to his suspension on October 5, 1980 for alleged insubordination. The Organization contends that the dismissal of the Claimant was unjust and unreasonable, that the action was in violation of Rule No. 3 of the controlling Agreement, and that the discipline assessed was excessive and unwarranted. Rule No. 3 (Seniority) of the controlling Agreement states, in pertinent part:

"3-B-1 Seniority of employees will be confined to the seniority district where employed.

3-B-2 No change will be made in existing seniority districts except by agreement between the Senior Director-Labor Relations and the interested General Chairman."

The Carrier argues that the record before this Board contains substantial evidence of the Claimant's guilt, that the trial was fair and impartial, and that no change in the Carrier's assessment of discipline is warranted in view of the serious nature of the proven offense.

There is no doubt, and the transcript before us explicitly states, that the Claimant admitted that he failed to comply with an order of his foreman. Claimant's excuse for failure to comply with this order was that he had not been previously informed that he had to "... go on the road."

Numerous decisions of this Division, and other Divisions of the National Railroad Adjustment Board, have long held that an employe is under a contractual obligation to perform the work assigned to him and to carry out instructions given to him by his supervisor. Exceptions to this rule are that an employe has sufficient reason to believe, in good faith, that such work or instructions pose an unusual hazard, a substantial injury to his health, or an abnormally dangerous condition of work at the place of employment. In fact, recent decisions of the U. S. Supreme Court indicate that the grounds for a legitimate refusal to comply with instructions of an employer may be expanding. However, in the case before this Board we find none of the recognized exceptions to the general rule as previously enumerated. This rule has long been interpreted to mean that the employe should comply with the order, and under the terms of the Agreement, file a grievance. We are, therefore, of the opinion that the position of the Carrier stating that in matters, such as the claim before us, the use of the grievance procedure is obligatory, not an elective procedure. No railroad, nor any employer, could be expected to operate in a safe and efficient manner unless its employes obeyed the rules and accepted instructions in a diligent manner. We so find that the long-standing rules as listed above have been violated in the case before us.

The Carrier further contends that the conduct of the Claimant was grossly insubordinate, and therefore, dismissal was an appropriate action given the evidence as adduced at the formal investigation. Lastly, the Carrier cites numerous decisions of this, and other Divisions of the Board, which sustain the right of the Carrier to dismiss employes who are found to be insubordinate and who refuse to comply with specific instructions.

In Second Division Award 4672, this Board stated:

"The dictionary definition of insubordinate is refusal to obey orders. The Claimants did refuse to obey orders and by so behaving they were resorting to self help. If employees may refuse to obey orders with impunity such a course of action would be destructive of discipline. A railroad cannot be run efficiently if its employees can refuse to obey orders given them by their superiors."

We also refer to Second Division Award 4782, and find it appropriate to the facts before us:

"The only way to raise an issue as to the reasonableness of a supervisor's directions is to obey and file a grievance. This is the procedure provided by the contract and must be followed. Disobedience consists of taking the law into one's own hands and is insubordination, which is a proper basis for discipline."

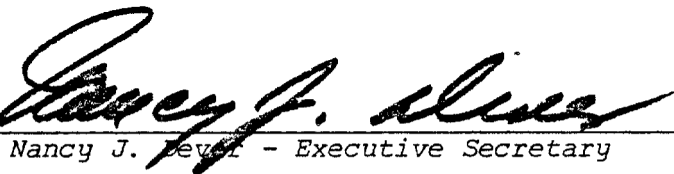
We perhaps may agree that the discipline assessed to the Claimant was harsh. Indeed, it is the ultimate discipline imposed in disputes between employes and employers. However, this Board has long held that it will not upset the measure of discipline assessed absent specific findings or arbitrary or capricious behavior, discriminatory conduct, or an abuse of managerial discretion. In our thorough review of the record, we find no acts sufficient by which we can interfere with the measure of discipline imposed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Leves - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June, 1984