

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That Billy Hackett, Jr. was unjustly dismissed by the Missouri Pacific Railroad Company on February 25, 1982.
2. That this unjust dismissal was the result of an unfair, prejudged investigation which was conducted on February 17th and 18th, 1982, at North Little Rock, Arkansas.
3. The undersigned was present at his investigation and strongly dissented the proceeding. (See page 10 and 16 of the investigation transcript.) In addition it appears that the charges against Laborer Mr. Billy Hackett, Jr., are dual and therefore improper.
4. That accordingly, Laborer Billy Hackett Jr. be restored to his assignment with all seniority rights unimpaired, and that he be compensated at the pro-rata rate of pay for all time lost, plus 12% annual interest, and that he be compensated for any loss due under the Vacation, Health and Welfare Hospitalization and Life Insurance Plans.

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, Billy Hackett, Jr., was employed as a laborer by the Missouri Pacific Railroad Company, hereinafter referred to as "Carrier". Claimant entered Carrier's service in approximately June, 1980.

On February 10, 1982, Claimant was notified to report for investigation on February 17, 1982, in connection with his alleged insubordination when he refused to comply with certain instructions of Mechanical Foreman B. D. Perrymore and General Foreman T. R. Green on February 10, 1982. This charge stems from an incident wherein Claimant did not immediately follow Foreman Perrymore's order to go to Perrymore's office and did not fill out the time card when instructed to do so by General Foreman Green. Claimant chose to defer doing so until he removed a full hose from a locomotive and restored it to its place.

On February 12, 1982, Claimant was notified to report for investigation on February 18, 1982, in connection with his alleged failure to:

1. Promptly report alleged injury;
2. Promptly notify his immediate supervisor; and
3. Furnish at once a full and complete report of alleged incident at approximately 3:45 a.m. on February 10, 1982.

The injury involved in these charges occurred at approximately 3:45 a.m. during Claimant's confrontation with Foreman Perrymore. Claimant's accident report stated that:

"... Foreman Perrymore 'grabbed' Laborer Hackett's left arm causing severe pain. Hackett snatched away ... causing a pulled muscle on the right side of back and bruised arm muscle."

Claimant did not inform anyone of this injury and did not hand in an accident report until 11:30 p.m. the next day. Additionally, Claimant intentionally failed to name an occurrence witness in the accident form.

As a result of these two investigations, Claimant was notified of his dismissal on February 25, 1982.

The Organization's position with respect to Claimant's failure to obey the instructions of Foreman Perrymore and Green is that Claimant would have been negligent in his job if he had gone to Foreman Perrymore's office immediately upon request. Claimant delayed leaving until he secured the fuel pump.

With respect to the charge of failing to promptly report an injury and properly filling out the accident report, the Organization states that Claimant filled out the required form immediately after receiving medical attention.

The Organization does admit that Claimant failed to fully fill out the form by failing to include a witness but argues that this is not sufficient grounds for dismissal.

The Carrier's position with respect to the February 17, 1982, investigation involving the insubordination charge is that the Claimant, by his own admission, was proven guilty of insubordination. To support this contention, the Carrier relies upon the following quoted testimony:

Claimant was asked:

"Did Mr. Perrymore give you instructions to go with him to the office to see Mr. Green?"

Answer:

"Yes."

Question:

"Did you go to the office with Mr. Perrymore?"

Answer:

"No."

Claimant was then asked:

"When you were called to the office and talked to Mr. Green and Mr. Perrymore, did Mr. Green instruct you to go get your time card, make it out, and bring it to him?"

Answer:

"He did."

Question:

"Did you do it?"

Answer:

"I did not."

Question:

"Did you comply with the instructions of Mr. Green?"

Answer:

"I did not. Mr. Green did not give me just cause as to why I should be sent home nor did he give me just cause why I should be pulled out of service."

The Carrier argues that Claimant's dismissal for insubordination was justified as Claimant's record reveals repeated incidents of failure to obey instructions.

With respect to the investigation of February 18, 1982, which dealt with Claimant's failure to promptly report the injury allegedly sustained when Foreman Perrymore attempted to get Claimant to go to Foreman Green's office on February 10, 1982, the Carrier contends that the Claimant's failure to promptly and properly report this injury constituted an offense serious enough to warrant his dismissal, particularly in light of Claimant's poor record.

It is not the function of this Board to substitute its judgment for that of the Carrier's in discipline cases absent a finding that Carrier's action was unjust, arbitrary, or capricious. After reviewing the record, this Board finds that Carrier's action in dismissing the Claimant was not unjust, arbitrary, or capricious and was, in fact, proper.

The Claimant, by his own admission, is guilty of insubordination by his failing to obey the instructions of Foremen Perrymore and Green. When Claimant did finally obey those instructions, it was with delay and challenge.

Claimant's record in his short term of employment is replete with incidents of failure to obey instructions without challenging authority. Repeated failure of employes to comply with instructions justifies dismissal. (See Second Division Awards 7432; 6689; 6645; 6456; and 6050.)

Claimant's failure to promptly and fully fill out the accident form is a serious offense justifying dismissal. (See Second Division Award 4526.)

The Carrier is responsible for all on-the-job injuries. Thus, Carrier must be informed of all injuries immediately so that there is no question that the injury occurred on the job. Additionally, if there is a dangerous condition on the job which caused the injury, the Carrier must know about it immediately so that it can be corrected. For these reasons, employes must not delay in informing the Carrier of any injuries sustained on the job.

In Second Division Award 7655, it was stated:

"We have previously recognized that a Carrier is entitled to have its employees complete personal injury forms totally and honestly."

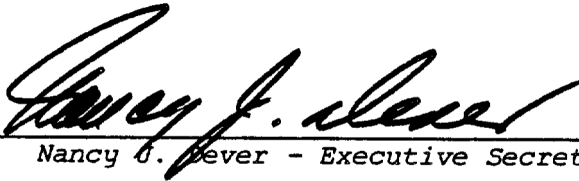
Form the above-discussed reasons, Carrier's action in dismissing Claimant was justified.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy G. Lever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1984.