

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 Electrical Workers
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(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Carrier erred and violated the contractual rights of Mr. Thomas J. Donnini when they removed him from service on May 6, 1980, as a result of an investigation held on April 17, 1980.
2. That, therefore, Mr. Donnini be returned to service with seniority and all other rights, benefits and privileges restored, and,
3. That he be compensated for all lost time including overtime pay and holiday pay, and,
4. That he be made whole for health and welfare benefits, and,
5. That he be made whole for all vacation rights, and,
6. That he be made whole for pension benefits, unemployment and sickness insurance, and,
7. That he be made whole for any and all other benefits, not specifically mentioned herein, that he would have received or would have earned had he not been withheld from 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.

Claimant, Thomas J. Donnini, entered the service of the Carrier as an electrician helper at Carrier's San Bernardino facility on July 6, 1972, and was promoted to electrician on February 1, 1978. Claimant worked the 11 p.m. to 7 a.m. shift at the time of the incident, which led to his termination.

In a letter dated April 9, 1980, Claimant was advised of a formal investigation to be held on April 17, 1980, to develop and place responsibility in connection with Claimant's alleged insubordination for failure to follow instructions from the lead workman to strip traction motors in the Traction Motor Shop on April 2, 1980, from approximately 1 a.m. to 7 a.m.

The Carrier had charged Claimant with violation of Rules 16 and 31(b) of Form 2626 Standard, "General Rules for the Guidance of Employees". Those rules state:

"Rule 16: Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious."

"Rule 31(b): Acts of disloyalty, dishonesty, desertion, intemperance, insubordination, willful neglect, gross carelessness, immorality, violation of rules whereby the Company's property is endangered or destroyed, making false reports or statements, being quarrelsome or vicious, concealing matters under investigation, etc., will subject the offender to immediate dismissal."

Following the investigation, the Carrier removed Claimant from service effective May 6, 1980.

The Organization claims that the Carrier erred and violated the contractual rights of Claimant when he was terminated, and he should be reinstated and made whole for all lost pay and other benefits.

The Organization argues that Carrier arbitrarily dismissed Claimant without considering all of the facts and without recognizing the circumstances that led to the incident in dispute.

Although the Organization admits that Claimant did not follow the instructions of the machinist lead workman, who ordered him to strip traction motors, there were mitigating circumstances that led Claimant to do other work for the Carrier that night.

The Organization argues that Claimant is ordinarily under the direct supervision of an electrician foreman; and on the night in question, he was given orders by Machinist Lead Workman McZeal. Claimant, the Organization contends, had no knowledge that McZeal was considered by the Carrier to be in charge of the shift. The Organization contends that Claimant was given orders that night by General Foreman Burchett to "get the frames set up on the wheels and on the tables" and "to get the boring mill ready". Claimant considered those instructions to be of primary importance and performed them.

Furthermore, the Organization argues, the Claimant did not strip any frames that night because he had no gloves or other equipment, such as a respirator, ratchet, or other tools. Claimant advised the General Foreman of that, and the General Foreman did not take exception.

Moreover, the Organization contends, Supervisor Eaton left written orders; and consequently, Mr. McZeal was not really in charge that night.

Finally, the Organization contends, in order for insubordination to be present, there must be willful intent. The record in this case shows no malice or "loafing" on the part of the Claimant but, if anything, only an honest mistake. Since the Carrier has failed to provide substantive evidence to support a charge of insubordination, the Organization argues, the claim must be sustained.

The Carrier contends that there was substantial testimony elicited at the hearing to show that Claimant had been given a work assignment by McZeal and not performed it. Carrier argues that there were no mitigating circumstances; Claimant was not unaware of the procedures; Claimant knew that McZeal could supply the proper tools and equipment to strip the traction motors; and that Claimant knowingly disregarded the direct orders.

Carrier also disputes the Organization's position that Claimant received conflicting orders from General Foreman Burchett.

Carrier argues further that insubordination cannot be tolerated in the railroad industry; and that after considering the Claimant's record, which Carrier contends was extremely poor, Carrier had the right to terminate Claimant. Carrier submits Claimant's past records showing substantial demerits since 1974, as well as a discharge for drinking on duty in 1974, and a suspension for lying down on a foam cushion in 1978. Claimant had been reinstated for leniency after the 1974 discharge.

This Board has reviewed all of the testimony and evidence in this case. The position of the Board on the question of insubordination of employees has always been the same. In Second Division Award 1542 we held:

"Discipline is a necessary adjunct between employees and their superiors in order to have proper relations between them. An employee must be obedient to the orders of his superior. If he has complaints (sic) to make there are proper methods for doing so."

Also, in Second Division Award 3894 we stated:

"Orderly, efficient, and safe operations among all employees are seriously threatened when insubordination goes unpunished; that is, proven insubordination is a serious offense, and it may not be ruled that discharge is too heavy a penalty therefore."

However, the facts in this case demonstrate that this is not a clear-cut case of insubordination where an employee has received a definite instruction from his supervisor that is possible for him to complete, and he refuses to do so.

The facts presented here are very different from that.

Although there is some conflict in the testimony, it is undisputed that the orders in question did not come from the Claimant's regular supervisor or by any regular supervisor but by a leadman who does not normally supervise employees. It was not established at the hearing that the delegation of authority by Supervisor Eaton to the leadman is a regular occurrence, and that Claimant should have recognized the apparent authority of the leadman.

Secondly, it is also not clear from the record that the instructions given to the Claimant were capable of being carried out. Claimant testified that he did not have the proper tools and equipment, as well as gloves; and, therefore, he could not do the work he was being asked to do. He, therefore, did something else.

Finally, Claimant testified, without rebuttal, that when he advised General Foreman Burchett that he had not stripped frames that evening, General Foreman Burchett did not take exception to his statement. Claimant worked the hours from 1 a.m. to 7 a.m. He did not "goof off". He just did not do what he had been requested to do by Leadman McZeal.

Hence, unlike the typical insubordination case, there are numerous mitigating circumstances in this matter.

However, it is clear from the record that Claimant received orders from Leadman McZeal to strip frames that evening, and he did not follow them. If he had some question about Leadman McZeal's ability to give him orders, he should have sought further information from another supervisor. He did not do that.

Based upon that record, it was arbitrary for the Carrier to terminate Claimant's employment. Although he does not have exemplary work history, he had no previous history of insubordination or refusal to follow work orders. He deserves a last chance to reform his conduct and to learn Carrier rules. Claimant is to be reinstated without back pay but with seniority rights unimpaired.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 5th day of December 1984.