

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(A.F.L. - C.I.O.
(Washington Terminal Company, Washington, D.C.

Dispute: Claim of Employes:

1. That the Washington Terminal Company violated the controlling agreement when they unjustly suspended carman apprentice K. J. Conklin as a result of investigation held on June 21, 1982.

2. That accordingly the Washington Terminal Company be ordered to reinstate Mr. Conklin with compensation for his net wage loss, seniority and vacation rights unimpaired, and made whole any loss due to health and welfare benefits not continued.

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 instant claim arises out of a dispute that occurred on the night of May 19, 1982. On that date the General Foreman, J. E. Lewis, was instructed to inform the Claimant, K. J. Conklin, to attend a safety remedial training class to be held at 8:00 a.m. on the next day, May 20, 1982. At around 7:00 p.m., the Claimant was so instructed. Shortly thereafter he returned to the General Foreman and indicated that he had a previous doctor's appointment scheduled on the 20th and that he and his wife had to attend. Following that statement and conversation he called at home other supervisory personnel including the Superintendent of Car Maintenance, P.H. Cooley, Jr. During his conversations with Mr. Cooley, Claimant indicated again that he had a prior commitment with his wife at the doctor's for the 20th and that he could not attend. He was asked if it was an emergency and Claimant indicated no emergency condition. He was instructed to be present at the remedial safety class the next morning.

On May 28, 1982, the Claimant was ordered to attend a hearing, which, after postponement, was held on June 21, 1982. Claimant was charged with being insubordinate, pursuant to Rule "N" when he failed to obey the order of his supervisors to attend the remedial safety class on May 20, 1982. A review of the record clearly indicates that the order was given and that the Claimant failed to obey the order. On behalf of the Claimant it is maintained that such orders were in the past put in written posted notice, but nothing in the record substantiates that such practice was policy or procedure when only one or two employees were involved, as in the instant case. It is further argued that there is no agreement provision requiring Claimant to attend class and in particular in his off duty hours. While that may be correct, there is rule support for following the orders of a supervisor and that is the central issue in this case.

This Board has studied the hearing and finds that the Claimant's rights to a fair and impartial proceeding were protected. It has considered carefully the testimony relating to conversations between the Claimant and Carrier Supervisors. A close evaluation of the instant case indicates that the request to attend the safety class was not made in a timely manner to the Claimant. However, in the absence of any rules or provisions on time and conditions of notice, this Board finds that Carrier personnel violated no Rules and had attempted to ascertain the seriousness of the disruption to Claimant's life versus the needs of the Carrier. Finding no evidence to convince them at the time of emergency or other reasons to release and reschedule Claimant, they required attendance. The Claimant indicated that he "had a prior commitment with a physician the following morning on my own time prior to 4:00 p.m." This Board notes that probative evidence neither substantiates a physician appointment, nor a time conflict of a previous appointment which conflicted with the safety meeting at 8:00 a.m. on May 20, 1982.

On the subject of insubordination it has been well established that unless an employee is subject to an immediate threat to his safety, he must carry out the orders of his supervisors. Even if an order to attend given twelve hours prior was a seeming abuse of managerial discretion, the Claimant had to object in an appropriate manner. In considering the dispute at bar it weighs heavily upon the Board that an employee who disputes the orders of a superior must first comply with the order and then file an appropriate grievance. This is a long standing rule of this industry which has been held in numerous cases unless it posed imminent danger to the employee or public which does not hold in the instant case (see Second Division Awards 7442, 7563, 7573, 7717, 7767).

In this dispute there is no question but that the Claimant was guilty of insubordination, in that he did not comply with the order and grieve later. In considering the discipline imposed this Board has carefully weighed the issue of managerial discretion in its notification to Claimant, with the lack of probative evidence submitted by the Claimant to verify an important conflicting morning appointment with a physician. In light of the circumstances surrounding this case, as well as the past record of the Claimant which was used solely to determine discipline, this Board will not substitute its judgment for Carrier, as the discipline assessed was not arbitrary, capricious or an abuse of discretion.

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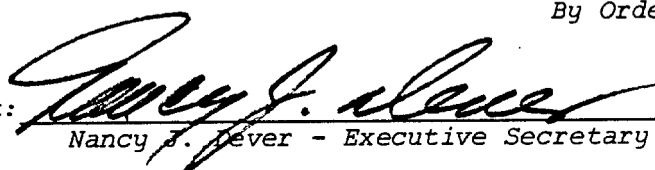
Award No. 10335
Docket No. 10350
2-WT-CM-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Leaver - Executive Secretary

Dated at Chicago, Illinois, this 13th day of March 1985.