

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Grand Trunk Western Railroad Company

Dispute: Claim of Employees:

1. That the Grand Trunk Western Railroad Company violated the controlling agreement, when they unjustly withheld Carman D. A. Divine from service for a period of ten (10) days beginning on March 30, 1984 ending on April 9, 1984, and when they improperly assessed his service record with thirty (30) demerits due to the alleged violation.

2. That accordingly, the Grand Trunk Western Railroad Company be ordered to compensate Carman Divine for all time lost at Carman's rate of pay, and that they remove the thirty (30) demerits from his personal records.

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, a Carman with the Carrier and in service since October 30, 1979, was given a ten day suspension and thirty demerits as a result of an Investigation held on April 3, 1984. The Claimant was charged with insubordination alleged to have occurred on March 30, 1984 in that he failed to comply with the instructions of his direct Supervisor to drive a 2 1/2 ton truck and report to the Consumers Power Company.

The Organization argued the Carrier has not met its burden of proof in this matter. The Claimant did not refuse but asked for time to contact his Union Representative and to use the restroom. The Claimant was given the option of going home, which eliminates insubordination. In addition, the Claimant was told by his Supervisor to inquire as to the status of a Company truck that was being repaired and, when the Claimant complied, he was reprimanded. The Claimant did recognize that he was given a direct order, but he only wanted to call his Union Representative. Asking for the opportunity to contact your Union Representative does not constitute insubordination. In

addition, the Organization argued the Claimant was improperly withheld from service prior to the Investigation, and the fact that demerits were placed on his record in addition to the ten day suspension constitutes a double penalty, which is not provided for in the Rules. In any event, the Organization claimed that the penalty was much too severe even if the Carrier has proven the case for insubordination. The Organization notes the Claimant had a clear work record.

The Carrier argued the Claimant was given a legitimate order by his immediate Supervisor, and approximately thirty minutes later the Claimant was still not complying with those instructions. The Supervisor again gave a direct order to the Claimant, and the instructions were still not complied with. Finally, after forty-five minutes had passed, the Claimant was sent home. The Carrier states it was the Claimant who provoked the incident, he had no legitimate reason for not complying with the order, and, given the nature of the offense, the penalties are appropriate, as insubordination is a serious offense. With respect to the withholding of the Grievant from service pending the Investigation, the Rule provides for this in serious cases, and, since this is a serious infraction, the Carrier was correct in withholding the Claimant from service.

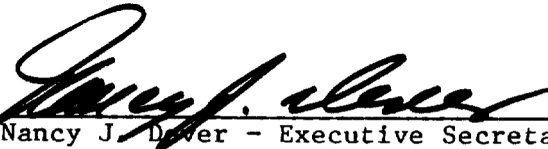
Upon complete review of the record in this case, the Board finds that the Claimant did engage in an activity that can be characterized as insubordination. He was given an order on two occasions, and for a substantial period of time failed to carry out those instructions. The Board can find no legitimate reason for the Claimant's failure to follow the direct orders of his Supervisor. The Rule in industry is that, unless a substantial safety matter is involved, employees are obliged to follow the legitimate instructions of their Supervisors and grieve the matter at a time subsequent to performance of the employees' responsibilities. The Board also finds the Rule provides for the Carrier to withhold employees from service pending Investigation in serious cases. This is a serious case, and the Carrier's actions were appropriate. The Carrier's Demerit System is part of a progressive disciplinary system and the Board will not interfere with the Carrier's disciplinary policy. With respect to the penalty, the Board finds the penalty to be proper and will not substitute its judgment for the Carrier's in this matter, and the Claim will be denied.

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 19th day of March 1986.