

The Second Division consisted of the regular members and in addition Referee Ronald Nelson when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers  
(Terminal Railroad Association of St. Louis

Dispute: Claim of Employees:

1. That the Terminal Railroad Association of St. Louis violated Rule 32 of the April 1, 1945 controlling agreement when it unjustly and improperly cited Electrician B. R. Odom under date of August 30, 1984 for improper investigation which was held October 3, 1984 and further unjustly dealt with him by assessing discipline of dismissal under date of October 8, 1984.

2. That accordingly, the Terminal Railroad Association of St. Louis be ordered to immediately return Electrician B. R. Odom to service compensating him from the date of August 30, 1984 and continuous as follows: (a) for all time lost until returned to service; (b) returned to service with seniority rights unimpaired; (c) made whole for all vacation rights unimpaired; (d) made whole for pension benefits including Railroad Retirement and Unemployment Insurance; (e) made whole for actual loss of payment for all health and welfare and insurance benefits on his dependents and himself; (f) made whole for any other benefits that he would have earned during the time withheld from service; (g) paid an additional 6% per annum compounded annually on the anniversary date of said claim; and, further, any record of this investigation and disciplinary action be removed from his personal record file.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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.

Docket No. 11155 and Docket No. 11156 are companion cases arising out of the same transactional facts.

The operational facts occurred within a relatively short time frame. Essentially, Claimant, an Electrician with Craft seniority of approximately 13 years, caused to be served upon the Carrier on August 28, 1984, a Complaint at Law with Summons alleging personal injury and seeking money damages. The injury complained of was a loss of hearing allegedly caused by continuous exposure to excessive noise in the work place.

On August 29, 1984, the Carrier removed the Claimant from service, and directed Claimant to obtain an audiogram, at Carrier's expense, at a local Clinic. Carrier's letter indicates that Claimant would be suspended from his duties until the Carrier received a favorable report from the Clinic.

On August 30, 1984, the Carrier issued a charge letter to the Claimant alleging Claimant's violation of General Rules 1110, 1107, General Safety Rule F, and Basic Rule 1, all of which related to the responsibilities of Carrier's employees relative to sustaining personal injuries on the property and reporting unsafe working conditions. The charge letter set a date for an Investigation that was subsequently postponed until October 3, 1984. The Claimant refused to sign a receipt for this charge letter in the presence of a witness-employee of the Carrier, and notwithstanding a direct order to sign the receipt by an appropriate official of the Carrier. The Claimant informed the Carrier's official that his Attorney had advised him not to sign any documents without his Counsel's prior inspection. The Carrier's official informed Claimant as to the contents of the letter, and that refusal to sign the receipt would constitute insubordination on the part of the Claimant. Claimant accepted the letter but reiterated his earlier refusal to sign the receipt.

On August 31, 1984, the Carrier issued a second charge letter to the Claimant citing the Claimant for insubordination in refusing, in the face of a direct order from an appropriate Carrier official, to sign a receipt for the August 30th charge letter. An Investigation was set and after postponement was conducted on October 2, 1984, one day prior to the Investigation relating to the August 30th charge letter.

As a result of both, but separate, Investigations, the Carrier dismissed the Claimant from service, and a timely appeal by the Employees followed.

A careful review of the record shows that the Claimant refused to sign the receipt for the August 30th charge letter in the presence of another Carrier employee-witness who corroborates by direct, uncontroverted testimony that the Claimant refused to sign the receipt. The record contains substantial evidence that the Claimant was advised of the nature and contents of the charge letter, and that refusal to perform the ministerial task of signing a receipt form for the letter would be construed as insubordination on the part of the Claimant. Claimant's reliance upon advice of Counsel as a defense to this charge of insubordination in this factual situation is insufficient. The record shows that the act of signing the receipt was ministerial

in nature, and in conformance with established Carrier procedure. It is clear from the record that Claimant would not have been jeopardized by signing the receipt form, and furthermore the record shows that Claimant actually accepted receipt of the Carrier's charge letter. Finally, the record contains an admission by the Claimant that the Carrier requested Claimant to sign the receipt and that Claimant did not sign it.

The charge of insubordination is clearly supported by the clear and substantial weight of the evidence in the record. Insubordination is an extremely serious offense, and if supported by the record will support discipline of dismissal. Furthermore, the generally accepted practice in labor relations is to obey the direct order of a superior, except in cases where the order could jeopardize the employee's health and safety, and grieve later (see Second Division Award Nos. 9074, 9174 and 9222).

This Board finds that the clear substantial weight of the evidence in the record before it supports the conclusion that the Claimant was insubordinate when he refused, under a direct order of a superior, to sign the receipt for a charge letter, and further that the discipline of dismissal was not an abuse of discretion, arbitrary or unjust on the part of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of March 1987.