

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was adopted.

Parties to Dispute: ((International Brotherhood of Electrical Workers
(Duluth, Missabe and Iron Range Railway Company

Dispute: Claim of Employee:

1. That the Duluth, Missabe and Iron Range Railway Company (DM&IR) unjustly suspended Electrician David Rockwell for a period of thirty (30) working days as a result of an investigation held on October 1, 1985.

2. Accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to pay Electrician David Rockwell for the time he was suspended and restore all benefits due him.

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 were given due notice of hearing thereon.

The record shows that at the time of the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as an Electrician and held a regular assignment as a Crane Operator at Carrier's Proctor Car Shop. There were two overhead electric cranes in the Shop and Claimant was required to operate both of them.

Prior to September 9, 1985, Claimant had complained as to the manner in which he was required to operate the cranes, the rate of pay for the Crane Operator position, and showed frustration over the need to prioritize his crane movements. The Carrier states that on September 9, 1985, three Car Shop Foremen and a Car Department Clerk were discussing various matters in the Shop office about 10:00 A.M., that Claimant walked into the office and began complaining about the crane assignment in a loud agitated voice, put his time card on the Clerk's desk, threw his safety hat and glasses to the floor, used vile and profane language to the Supervisors and then hurriedly left the office; that two Supervisors instructed Claimant to return, that Claimant ignored both, and left the premises in his automobile.

On September 12, 1985, Claimant was advised that an Investigation was scheduled for 1:00 P.M., September 24, 1985:

"...to develop the facts and circumstances surrounding your violation of Rules of the Car Department, Code of Conduct and Safety Rules, General Rules 3, 12, 13 and 14; specifically that on Monday, September 9, 1985, you left your Car Shop crane operator's job without permission of the supervisor, you were insubordinate with Car Shop Supervisors, you ignored instructions from a supervisor, and you entered into an altercation with Car Shop supervisors."

The Rules cited in the September 12, 1985, notice to the Claimant read:

"Rule 3 Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with, or substitute others in their place without clearance from their supervisor."

"Rule 12 Employees must not be careless of the safety of themselves or others. They must not be disloyal, insubordinate, dishonest or conduct themselves in such a manner that the Railway Company will be subjected to criticism or the loss of goodwill. Employees who persist in unsafe practices to the jeopardy of themselves or others will be subject to discipline even though the actions do not violate a specific rule."

"Rule 13 Employees must comply with instructions from their foreman, supervisor or an identified official of the Company."

"Rule 14 Employees must not enter into altercations or indulge in horseplay with any person, regardless of provocation."

At the request of the Organization, the Investigation was postponed and conducted on October 1, 1985. A transcript of the Investigation has been made a part of the record. We have reviewed the transcript and find that the Investigation was conducted in a fair and impartial manner and that none of Claimant's substantive procedural rights was violated.

There was substantial evidence presented in the Investigation in support of the charges against Claimant. The "substantial evidence" Rule was set forth by the Supreme Court of the United States as:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept to support a conclusion." (Consol. Ed. Co. vs Labor Board 305 U.S., 197, 229).

(Second Division Awards Nos. 6419, 11179, 11180, 11184, 11239, 11240, 11269, among others.)

Claimant's actions on September 9, 1985, constituted insubordination. In Award No. 11120 we quoted the following from Third Division Award No. 24732:

"Insubordination may involve more than a direct refusal to comply with instructions. It may involve the use of foul and abusive language, threats, altercations and similar offenses."

Although Claimant may have been frustrated over his working conditions as a Crane Operator, such frustrations certainly did not warrant the action that he took. No employe may properly be permitted to take matters into his own hands, so to speak, in a situation of the kind here involved. Insubordination simply cannot be condoned.

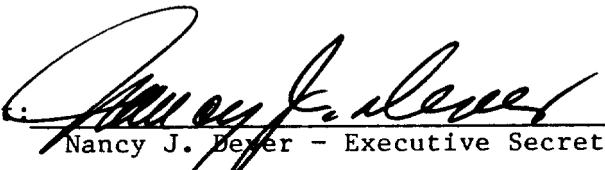
The discipline imposed by the Carrier was not arbitrary, capricious or in bad faith.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 1st day of July 1987.