

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13958
Docket No. 13846
08-2-NRAB-00002-070032
07-2-32

The Second Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

**(Brotherhood of Railway Carmen Division of TCIU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

- “1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1 when they arbitrarily suspended Carman Timothy Locke from service for ten (10) calendar days beginning October 1, 2006 to October 10, 2006 inclusive. Following Carman Timothy Locke’s return to service the Carrier further disciplined him with one (1) day of Safety Training, as a result of this infraction.**

- 2. That accordingly, the Springfield Terminal Railway Company be required compensate Carman Timothy Locke in the amount of ten (10) calendar days pay. The entire time he was withheld from service. The Carrier be required to compensate Carman Timothy Locke for fourteen (14) hours and thirty (30) minutes at the overtime rate of pay. This is the amount he would have earned had the Carrier not violated the Agreement. Furthermore, the Carrier be required to remove all correspondence relative to this investigation and expunge from the record, any and all information regarding this dispute.**

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 employee 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.

On July 12, 2006, Carrier notified Claimant to appear for a formal Investigation on July 21, 2006, which was postponed and subsequently held on August 21, 2006, concerning the following charge:

“This Notice of Hearing is issued to investigate and place your responsibility, if any, in connection with the following, but not limited to the charge(s) below:

Violation of Guilford Rail System Rule GR-C

In particular, paragraph two which states: “To remain in the service, employees must refrain from conduct which adversely affects the performance of their duties, other employees or the public. Any act of insubordination, hostility or willful disregard of the Company’s interests will not be condoned and is sufficient cause for dismissal.”

Specifically, on June 26, 2006 when instructed by Assistant Manager Shawn Nava to go to Winn, Maine to re-rail a freight car derailed on the main line, you refused to go and generally behaved in an obstinate and obstreperous manner. Ultimately, you did as instructed, but only after being advised that you were facing suspension if you did not.”

On September 27, 2006, Claimant was notified that he had been found guilty as charged and was assessed a ten calendar day suspension with a requirement upon his return from suspension to attend a one day paid safety training class.

It is the position of the Organization that Carrier erred in suspending the Claimant. It argues that Claimant had a legitimate safety issue when he questioned the safety of three adult men riding in a pickup for two and one-half to three hours, one way to Mattemwakeag from Waterville because there was a radio pack mounted on the hump in the middle of floorboard which forced the person sitting in the middle to put his feet towards the right side. Additionally, the person in the middle only had a lap belt with no shoulder strap. It also argues that Claimant was not disrespectful or insubordinate to his immediate Supervisor Mr. Nava and only wanted a ruling from Superintendent Gray as to whether he thought transporting three men under the aforementioned conditions was safe. When he received the ruling, he obeyed Mr. Nava's directive. Furthermore, it states that Carrier contradicted itself when it told Claimant he would face a suspension if he did not follow its instructions to get in the truck and go to the derailment and then when he did as instructed it still suspended him. Last, it argues double jeopardy because Claimant was given a ten calendar day suspension and then after it he was required to attend a one day safety training class.

Carrier argues there is no validity to the Organization's arguments. It submits that Claimant is guilty as charged. It argues that the record establishes that the Claimant did not take issue with Mr. Nava's order because of a legitimate safety concern. Rather, he would not comply with the order based on a comfort issue. It states that Superintendent of Mechanical's testimony indicates that the Claimant initially complained he did not want to ride in the truck because Mr. Nava was a smoker and then complained of having to ride in the truck with two other occupants at which time he became belligerent. It further argues that had the Claimant not agreed to ride in the truck after speaking with Mr. Gray, Assistant Superintendent, Waterville Mechanical, he may have been subjected to a different degree of discipline. In conclusion, it states there was no double jeopardy as the ten day suspension with the one day of training was all part of the singular discipline that was issued.

The Board has reviewed the transcript and record of evidence and finds that on June 26, 2006, Claimant was instructed by Assistant Manager Nava to go to Winn, Maine, to assist in re-railing a freight car derailed on the main line. After being given those instructions Claimant complained about having to ride in a pickup with three men because it would be cramped account of a radio being on the floor. Claimant's demeanor was essentially obstinate and was confirmed by Mr. Nava's written statement which reads in part as follows: "exact words was that if he had to cram into the truck he would stay here and we would have to get someone else to go." Testimony at the Investigation revealed that the truck was a full size pickup with a bench seat designed to accommodate three adults with seat belts and that it was registered and had passed the required State of Maine inspection as being safe to operate on the highway. Testimony further confirmed that Claimant walked away from his immediate Supervisor rather than obey his instructions, after which he sought out his Local Representative and then called the Assistant Supervisor who ordered him to follow Mr. Nava's orders after which he complied.

Personal safety can be justification for refusal to obey instructions (See Second Division Awards 5861 and 706) but in this instance the standards for not obeying orders were not met. The record indicates there was no legitimate basis for questioning the safety of having three men ride in the aforementioned truck. The complaint made by the Claimant was one of comfort versus safety raised under the guise of a safety issue. We agree that the trip may not have been as comfortable with three people as with two, but there was no safety issue nor was there even a good argument for raising the question. Claimant's behavior was not appropriate and it is clear that the Carrier has met its burden of proof that he was guilty as charged. Claimant would have been wise to have "obeyed now, and grieved later".

The only issue remaining is whether the suspension was justified. The Board finds and holds that the suspension was appropriate in this instance because it was not arbitrary, excessive or capricious. The discipline will not be set aside.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of October 2008.