

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13965
Docket No. 13854
08-2-NRAB-00002-080008

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

PARTIES TO DISPUTE: (Brotherhood of Railway Carmen Division of TCIU
(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, when they arbitrarily removed Carman Ty C. Jarret from service effective April 10, 2007. Prior to that, Carman Ty C. Jarret was withheld from service on Tuesday, March 20, 2007.
2. That, accordingly, the Springfield Terminal Railway be required to compensate Carman Ty C. Jarret for all time lost as a result of this discipline and be required to compensate Carman Ty C. Jarret as follows:
 1. All vacation lost as result of this discipline;
 2. All lost wages as a result of this dismissal, until restored;
 3. All holiday rights;
 4. All personal day rights and credits;
 5. All seniority rights;
 6. All Health and Welfare rights;
 7. All retirement benefits;
 8. Compensate Carman Ty C. Jarret for all premiums lost as a result of this improper discipline;
 9. Compensate Carman Ty C. Jarret for all dental care benefits, vision care benefits, surgical care benefits and hospital care benefits;

- 10. Compensate Carman Ty C. Jarret for all life and sickness insurance benefits;**
- 11. Expunge from the record all discipline on behalf of Carman Ty C. Jarret as a result of the charges brought against 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 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 March 21, 2007, Carrier notified Claimant to appear for a formal Investigation on March 27, 2007 concerning the following charge:

“The Notice of Hearing is issued to develop the facts and place your responsibility, if any, in connection with the incidents outlined below:

Insubordination & Violation of the Springfield Terminal Railway Company Safety Rules, Safety Rule – GRC (second and third paragraphs)

The charges outlined above are a direct result of your alleged insubordinate conduct on Tuesday, March 20, 2007 at approximately 0715 hour at the Lawrence, MA. Repair track when you refused to perform your specific assignment that was issued by your Supervisor Donald T. Silk, Jr. Your instructions, issued by Mr. Silk, was to utilize

a grinder to remove the belt rail and the related spot weld securement of the belt rail on the box car B&M 3365.”

On April 10, 2007, Claimant was notified that he had been found guilty as charged and was dismissed.

It is the Organization’s position that the Carrier erred in dismissing the Claimant as he was not guilty of insubordination. According to it the Claimant was asked to remove the belt rails from BM 3365 on March 20, 2007 with a grinder. It argues that Claimant had a legitimate safety concern about using a grinder for the project and asked Supervisor Silk how the task could be done safely, but rather than explaining to Claimant how it could be accomplished safely the Manager chose to pull the Claimant out of service and sent him home. The Organization further argued that the Claimant did not say he would not do the job, he instead stated that he was afraid to use to grinder as it was unsafe. The Organization concludes by arguing that the Carrier over reacted in its dismissal of the Claimant over a legitimate safety issue and because of that the discipline should be rescinded.

It is the position of the Carrier that prior to the incident in dispute the Carmen in Lawrence, MA, had been using a torch to remove the belt rails and because the torches were putting holes in the side sheets it wanted Carmen to use grinders to perform the task of removing the belt rails and related spot welds. On March 20, 2007, Supervisor Silk instructed Claimant to use the grinder to remove the spot welds and belt rails from inside of the box car. Supervisor Silk testified that the Claimant immediately decided that he was not going to perform this task, even before examining the Carrier’s grinders. The Carrier argued that Claimant took the position that the grinder was not intended to perform the task and would not listen to Supervisor Silk’s explanation that the grinder was designed to handle the work and because of his adamant refusal to do the work the Supervisor had no choice but to send him home.

The Carrier also argued that the transcript reflects the fact that General Manager Austin (36 years seniority) testified that he had approved using the grinder for the removal of belt rails and spot welds in the method Supervisor Silk had instructed the Claimant to use. Additionally, it pointed out that Supervisor Silk testified, that after the Claimant left the property Carman Eric Olson continued to

use a grinder to accomplish the work and took no exception nor did he voice any safety concern and that everyone else at the Lawrence facility had been asked to use the grinders for the same task and no had a problem or concern over the methodology of work. Last, it argued that the discipline assessed was justifiable and appropriate and should not be disturbed.

The Board has thoroughly reviewed the record and finds that the Claimant admitted he refused to use the grinder. Claimant's defense for not using the grinder is that if he had used the grinder he would have placed himself in risk of serious injury. This Board has repeatedly recognized the fact that employees can legitimately refuse to do a task that place them in a position of potential serious injury. Therefore, the question at issue in this dispute is whether or not Supervisor Silk's directive to Claimant placed the Claimant in "harms way".

Review of the record reveals that the Car Department at Lawrence, MA, has used the same type of grinding wheels to perform similar or exact work for years and there is no evidence of any mishaps resulting from their use. The transcript further indicates that Claimant should have known that the grinding wheels could be used to cut and grind in the manner Supervisor Silk instructed, but in this instance Claimant wanted to use a torch, because it was easier and less work for him. It is clear that Claimant had no concern about the cost any delays associated with his choice of tools would have and he did not like having Supervisor Silk tell him how to perform his work. Claimant's testimony on pages 96 - 98 shows that he has the opinion that there is nothing a Supervisor can say to make him do a job if he believes a work method is not safe even after being shown that it is safe. At the time of this incident Claimant behaved in an obstinate manner when he had no legitimate safety concern. No proof was offered that Supervisor Silk's instructions would have placed Claimant in jeopardy. The testimony of the Carrier's witnesses was far more credible that that of the Claimant's self-serving testimony which has proven that Claimant was guilty of insubordination.

The only issue remaining is whether the dismissal was appropriate. At the time of the offense the Claimant had less than a stellar work record. The Board finds and holds that dismissal is 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.