

Award No. 2685

Docket No. 2582

2-CofG-EW-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

CENTRAL OF GEORGIA RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

a) That under the controlling agreement Craneman (Electrician) B. W. Meeks was both unjustly suspended on May 3, 1956 and discharged from the service on May 15, 1956.

b) That accordingly, the Carrier be ordered to reinstate the above mentioned employe and to compensate him for all wages lost as the result of said unjust suspension and discharge.

EMPLOYEES' STATEMENT OF FACTS: Craneman (Electrician) B. M. Meeks (hereinafter referred to as the claimant) has been employed as such by the Central of Georgia Railway Company (hereinafter called the carrier) at Macon, Georgia, since June 19, 1945, and his assignment of hours were from 4 P. M. to 12 midnight, Wednesdays through Sundays, with rest days Monday and Tuesday, at the time this incident occurred.

The claimant was suspended from service on May 3, 1956, without a hearing. The carrier's Mr. McKay, master mechanic, made an election to prefer charges against this claimant on May 8 and therein summoned him to stand trial at 10 A. M., May 16, 1956, for cause stated in and affirmed by the submitted copy of letter identified as Exhibit A.

The claimant's hearing, by mutual understanding between the parties, was held on May 15, instead of as originally scheduled on May 16, and same was conducted by the carrier's Mr. McKay, master mechanic, and a copy of the transcript thereof is submitted herewith and identified as Exhibit B. Nevertheless, the carrier's Mr. McKay, master mechanic, elected on the same date of the hearing to discharge the claimant from the service of the

subject to discipline for insubordination. If, in obeying such orders, any rights which he may have by reason of the provisions of the agreement are violated he can and must be redressed through the channels which the agreement provides for his protection."

Award 1787—Second Division (Referee Adolph E. Wenke).

"The hearing record discloses that on Tuesday, February 12, 1952, claimant's immediate supervisor, Roundhouse Foreman John H. Edmiston, told him, about 12:20 P.M. to grease steam engine No. 9941 when it was placed on Machine Shop Track No. 1 for that purpose. Claimant told his foreman to put the engine in the roundhouse, or some other place where he could safely do the work, and he would grease it. Edmiston told claimant the second time to perform these duties and then a third time, the latter being done in the presence of General Foreman W. J. Snell. Engine No. 9941 was placed on machine shop track No. 1 but claimant never greased it. He told his foreman the local chairman had told him not to do so; that, during inclement weather, it was not safe to work on it when it was out in the open; and that he would have to see his committeemen first.

"Rule 43 of the parties' agreement provides: 'The health and safety of employes will be reasonably protected'."

"Carrier, in directing its working force, is obliged, when exercising this authority, to make the initial interpretation of the rules and direct how the work shall be done. In this respect employes must, as a general rule, carry out the orders given for this purpose and, if such orders are improper; seek redress under their contract in the manner provided for that purpose by The Railway Labor Act. To hold otherwise would condone attempts by employes to take over this duty of management..."

and there are other Second Division awards also.

CONCLUSION

The facts of record speak for themselves. The claimant admitted he refused to follow his foreman's instructions as shown in the investigation. The carrier cannot be expected to tolerate insubordination, else it will find its forces in utter turmoil and chaos. The claim clearly has no merit whatsoever, and carrier urges the Board to render a denial award.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

The employes contend that the claimant's refusal to work as directed was justified by the presence of excessive exhaust gas and smoke from

Diesel engines. It is generally recognized that an employe may refuse to follow an order from his supervisor which would directly and immediately imperil his health or safety. There is no evidence that such was the situation here. Exhaust gas is an inherent attribute of a Diesel shop and it fairly appears that claimant and other cranemen have worked under the same and more adverse conditions. There is no evidence that such work impaired their health.

The presence of such gas and smoke might justify a request for a respite from claimant's duties on an overhead crane, but do not justify an outright refusal to go back on the crane to perform a few minutes service. Thus it is clear that the evidence adduced at the investigation supports the imposition of discipline. Since the claimant was found guilty of insubordination on a prior occasion, discharge was not an arbitrary or excessive penalty.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.