Award No. 2704
Docket No. 2485
2-ACL-CM

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) That, under the controlling agreement, L. B. Montrose was unjustly held out of the service effective April 10, 1956 and wrongfully discharged from the service effective June 12, 1956.

(2) That Montrose be restored to service with seniority rights unimpaired and compensated for all time lost.

EMPLOYES' STATEMENT OF FACTS: Mr. Montrose was employed July 7, 1942 as car repairer and has been in continuous service since that date.

On December 2, 1949 he had the misfortune to sustain a broken leg while on duty. Mr. Montrose was not a member of the ACL Relief Department and was hospitalized at McLeod Infirmary on December 2, 1949 and was a patient of Dr. George B. Dawson, Jr., who, incidentally, is one of the Atlantic Coast Line consulting physicians. His period of disability was from December 2, 1949 to June 27, 1951. The broken leg was occasioned by reason of a store house laborer permitting a roll of mule hide to fall on Mr. Montrose's leg. The railroad acknowledged and assumed the liability, paid his hospital bill and in addition made a cash settlement of $4,000.00 which was less than the actual lost time.

Mr. Montrose was again injured on June 1, 1953 while attempting, without assistance, to remove a sliding side door from an express car for repairs, the door falling on him and severely injuring his back. Mr. Montrose was hospitalized at Bruce Hospital from June 1, 1953 to June 15, 1953 (traumatic injury to ligaments and tendons of lumbar-dorsal region) and again from September 27, 1953 to October 16, 1953 in the same hospital (strangulated right spermatic cord e chr. Infected Hydrocele). Total disability period June 1, 1953 through

different medicines, that he had staggered while at work on January 22nd, along with his past history of high blood pressure, all gave rise to the necessity for ordering a physical check-up. To have done otherwise would have been imprudent, in our estimation."

The several awards mentioned above fully substantiate carrier's position that it has the right to require a physical examination of an employe when it appears such an examination is necessary. They also substantiate its position that when an employe refuses to obey the proper order of his superior, discipline is warranted. While the findings in only a few awards have been mentioned, there are many more in point which could be cited.

The employes' claim that Mr. Montrose was unjustly held out of service and wrongfully discharged from carrier's service has not been supported. The facts and circumstances amply justify the action taken by the carrier and the Board is respectfully requested to deny the claim.

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 carrier states that the claimant entered its service on July 7, 1942, and during the sixty-one month period from December 1, 1949 to January 1, 1955, the claimant had been absent from duty approximately 45% of the assigned work days due to personal injuries received by him on December 2, 1949, January 1, 1953, and July 16, 1954. Carrier states that the claimant also had sustained minor personal injuries while on duty. Carrier states that on April 6, 1956, it required the claimant to take a physical examination and this requirement was based on the facts that the carrier had just cause to require the physical examination in order to determine, if possible, any physical condition of the claimant that might be contributing to his accident proneness and that possibly the examination might indicate the cause and something could be prescribed which might alleviate the trouble.

The employes state that the claimant was hospitalized on December 2, 1949, on account of a fractured leg. He was discharged from the hospital on December 11, 1949, in a cast, that he had been examined personally by the carrier's doctor, Dr. Dawson, and released for duty on June 27, 1951; that the claimant was hospitalized on June 1, 1953, on account of a severely injured back and badly bruised right testicle; that he was discharged from the hospital on June 15, 1953, that he had been seen and examined by the carrier's doctor, Dr. Dawson, on June 10, 1953; that he was re-hospitalized on September 27, 1953; that he had undergone surgery and had his right testicle removed. He was discharged from the hospital on October 16, 1953, and returned to service on January 18, 1954; then the claimant was hospitalized on June 16, 1954, on account of re-injured back and was under the care of carrier's doctor, Dr. Dawson; was discharged from the hospital on July 23, 1954, and continued under the treatment of Dr. Dawson until January 15, 1955, and returned to service on January 15, 1955.

The claimant dealt personally with the carrier's claim department trying to obtain a settlement for the injury which occurred on June 16, 1954. He was unable to obtain a settlement, hired an attorney, a petition was filed and a settlement was made out of Court with the claimant on March 22, 1956. This settlement was based upon the full physical recovery of the claimant and on the fact that he had been at work with this carrier since January 15, 1955.

When the carrier asked this claimant to undergo a physical examination to ascertain, as the carrier puts it, "the physical condition of the claimant that might be contributing to his accident proneness." The carrier had waited an unreasonable length of time to demand this physical examination. The claimant had been working at that time for the carrier since January 15, 1955, and the carrier offers no evidence to show that this claimant had been prone to any accident during this sixteen month period. If the carrier wished to ascertain the reason why the claimant had three major accidents, it should have required a physical examination on or before January 15, 1955, the date the carrier allowed this claimant to return to work. Outward signs of a physical disability were not apparent when the claimant's medical examination was ordered and a physical checkup was demanded although there was no dissatisfaction with the claimant's work performed and there was no noticeable change in claimant's physical condition that would raise a doubt about his ability to satisfactorily continue his work.

It is concluded that the instant request for a physical examination was unreasonable and arbitrary. Therefore, the claimant's being held out of service on April 10, 1956, and discharged from service on June 12, 1956, were unwarranted and in violation of the effective agreement.

AWARD

Claim sustained. Claimant should be returned to service and should be reinstated with seniority rights unimpaired and remunerated for all time lost from April 10, 1956, as the result of carrier's action, with deduction of wages, if any, earned in any other employment during the period for which he is awarded back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1957.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 2704

The majority in its Findings make no reference to the fact that Montrose was dismissed for insubordination and instead deal solely with the Carrier's right to have an employe examined. This Board has ruled many times that an employe must carry out the directions of his superiors so long as such instructions do not endanger his well being or that of his fellow workers.

In the instant case, claimant took it upon himself to completely ignore the instructions of his superior.

This Division in Award 1459, with Referee Carter assisting, denied claim of Carman Kingery for his reinstatement and compensation for all lost time when he was directed on May 12, 1950, to report to the Chief Surgeon for a physical examination, refused to undergo the examination, and was dismissed. Findings state in part:

"If Carrier violates the agreement, the Railway Labor Act provides the recourse that the employe or organization may pursue. The directives of the Carrier must, however, be followed. Uutter confusion would result if each employe were permitted to determine for himself if directions received were in accord with the collective agreement. A failure to carry out the directions of the Carrier, unless they exceed all bounds as to reasonableness, constitutes insubordination. The case against claimant was established by his own admission."

In the instant case, Mr. Montrose, by his own admission, established his insubordination.

In Award 1542, with Referee Wenke, in passing on an insubordination case, this Division had this to say:

"Discipline is a necessary adjunct between employes and their superiors in order to have proper relations between them. An employe must be obedient to the orders of his superior. If he has complaints to make there are proper methods for doing so."

Again this Division in Award 1543, with Referee Wenke assisting had this to say about insubordination:

"Regardless of what rights an individual employe coming under a collective bargaining agreement may have by reason thereof he still owes obedience to the orders of his superiors when on duty. He is not at liberty to assert those rights for himself but must comply with any orders given him. His failure to do so will make him subject to discipline. If, in obeying such orders, any rights which he may have by reason of the agreement are violated his redress lies through the channels which the agreement provides for his protection. In this respect, the individual employe does not waive any of these rights by complying with the orders of his superiors."

Likewise in Award 2134, with Referee Wenke assisting, this Division found in part:

"An employe must be obedient to the orders of his superiors regardless of what rights he may have under the provisions of a collective bargaining agreement. His failure to do so will make him 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. There are exceptions to these principles but the facts here presented do not have application thereto."

Numerous awards of other Divisions have held that any employe must comply with the instructions of his superiors even if he may feel that his instructions violate some contractual right, in which event the agreement rules afford him a means of progressing a claim. To cite a few:

In Third Division Award 7289, in which two employees were dismissed for refusing to comply with instructions given them by the Assistant General Foreman, it was held:

"Apparently this dispute is the result of a misunderstanding. The employes involved being under the impression that the organization committee had presented their objection to working under conditions then prevailing in this operation. However, they should have gone ahead on the assignment as directed as the Agreement provided remedies in such circumstances and by their refusal they defeated their own claim.

* * * The work should have been performed and redress sought under the rules of the Agreement. Otherwise an employe with immunity could refuse any task assigned on his own interpretation of the meaning of rules which would result in a chaotic condition. In this connection see Awards 3218, 3260 and 3340."

In First Division Award 14972 an engineer invoked the provisions of a relief rule in the Agreement as justification for refusing to continue on a temporary assignment. Carrier would not permit him to mark up for service until the temporary assignment had been completed, and his claim was for pay for the time thus lost. The Division in denying the claim held that:

"To sustain this claim would simply be to condone an employe's taking the law into his own hands to enforce what he considered to be his contractual rights instead of following the contract procedures to obtain redress for a violation thereof. It is well settled that the carrier has the authority to direct the working force and if an employe considers such directions as violative of his contractual rights he nevertheless has a responsibility to perform the service as directed and has a contractual right to file a claim or grievance to obtain redress for the alleged violation. To hold otherwise would make each employe the final arbiter of his own interpretation of the agreement, which could only result in chaos."

In Award No. 1462, this Division with Referee Carter assisting, sustained claim of the organization that their agreement was being violated when the Illinois Central Railroad Company required physical re-examination of employes being restored to service after having been furloughed or out of service for a period of six months or more.

In that case the claimant and the organization followed the procedure fixed by the Railway Labor Act; that is, the lawful instructions from superiors were carried out and claim filed for violation of agreement.

In the instant case, however, claimant took it upon himself to interpret the agreement and deliberately and knowingly refused to obey the instructions of his superiors. If this Board upholds the right of an employe to decide what instructions are to be obeyed or disobeyed, then Carrier will have lost all control and utter confusion will be the inevitable result.

E. H. Fitcher

M. E. Somerlott

D. H. Hicks

R. F. Johnson

J. A. Anderson