

Award No. 3568
Docket No. 3169
2-DM&IR-CM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 71, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

DULUTH, MISSABE AND IRON RANGE
RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Helper-Oiler William J. Majerle was unjustly dealt with when he was dismissed from service on June 11, 1957.

2. That accordingly the Carrier be ordered to restore the afore-said Carman Helper-Oiler to service with all service rights unimpaired and with compensation for all time lost retroactive to the aforementioned date.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper-Oiler William J. Majerle (hereinafter referred to as the claimant) entered the service of the carrier April 21, 1947. On April 20, 1957 claimant accepted a position of upgraded carman helper at Mitchell, Minnesota, with hours of service from 11:00 P.M. to 7:00 A.M. He reported for work on that position on April 23 and continued to fill it until he asked to be excused during his tour of duty on April 30. He was given notice under date of May 1, 1957 to appear for investigation on May 7 on a charge of insubordination and leaving his job without permission and pursuant to this notice the investigation was held on that date. Following this investigation claimant was notified he was dismissed from the service effective June 11, 1957.

This dispute has been handled with all officers of the carrier designated to handle such disputes, including the highest designated officer of the carrier, all of whom have declined to make a satisfactory settlement.

The agreement effective January 1, 1948 is controlling.

POSITION OF EMPLOYEES: The record in this dispute does not support the carriers contention that the claimant was guilty of insubordination or of leaving his job without permission as charged by the carrier. Therefore, within the meaning of Rule 29 of the controlling agreement in pertinent part:

the rights of others, and ignore or defy the ordinary rules of conduct. It is seldom true, however, that disciplining for an infraction involves only one person because it is a well known fact that if management does not deal effectively with those who violate the rules, disrespect for order may easily spread to those who would otherwise comply, for what happens to one man under given conditions may reasonably be expected to happen to all others under the same conditions.

In view of the foregoing therefore, it must be perfectly obvious that maintenance of proper discipline in the carrier's working force required that Mr. Majerle be dismissed from service.

CONCLUSION:

In awards of the National Railroad Adjustment Board dealing with disciplinary matters it has become axiomatic that the Board does not have the authority to substitute its judgment for that of a carrier, nor disturb the action of a carrier, unless the record clearly shows that the action taken by a carrier be so arbitrary capricious, or fraught with bad faith as to amount to an abuse of discretion. This principle is well stated in Fourth Division Award No. 257, wherein the Board held::

"This being a discipline case the Carrier is vested with discretionary power and under such circumstances this Board's authority is limited. The Board will not disturb the action taken by management unless the record clearly shows that the action taken was arbitrary or in bad faith."

In this case we have shown (1) that the claimant was accorded full opportunity for a fair and impartial hearing in accordance with the agreement rules **under which he was working**; (2) that the claimant willfully and wrongfully refused to participate in the hearing when it was held; (3) that the claimant was found guilty of the charges made against him on the basis of the evidence adduced at the hearing; and (4) that the claimant's employment record with the carrier proves beyond a question of doubt that he is a person who cannot accommodate himself to reasonable rules of conduct.

The carrier submits, therefore, in conclusion, that if the principle above stated is applied to the facts of record, it must be found in this case that the action of the carrier was neither arbitrary nor in bad faith, but entirely justified under the circumstances, and should not be disturbed. To find otherwise, in our opinion, would be to render a disservice to employer and employe alike, and to make unreasonably difficult, if not impossible, the maintenance of the proper discipline essential to successful operation of a railroad.

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.

Parties to said dispute were given due notice of hearing thereon.

Claimant was dismissed from the carrier's service on June 11, 1957 for insubordination in refusing to follow his supervisor's order and in leaving his job

without permission during his assigned tour of duty at Mitchell Yard on April 30, 1957.

On May 1, 1957, he was notified to attend an investigation of the charge against him to be held on May 7. At the opening of the scheduled hearing, claimant, on the advice of his local committee, requested a postponement until there was a determination of the position of the local committee that two of its members were entitled to act as his representatives at the hearing. This request was denied by the hearing officer on the ground that claimant was entitled to but a single representative under rule 29, and that the Chairman of the local grievance committee (one of the two representatives mentioned) was present and available to act in claimant's behalf. Thereupon claimant and his representative walked out of the hearing and it was conducted without them.

Rule 29 provides that "the employee and his representative will be advised before a hearing, the nature of the charges and at the investigation may be represented by the duly authorized representative of his craft." This plainly contemplates a single representative, but the organization maintains that on other occasions on this property more than one representative appeared for a charged employee at the hearing and that consequently the carrier's refusal to permit it in this case constituted an arbitrary abuse of discretion.

In view of the plain language of Rule 29, we think claimant's contractual right to be represented by a representative of his choice was not infringed, and that in declining to participate in the hearing under the circumstances shown of record he assumed responsibility for the consequences of his voluntary act. We have given careful consideration to the evidence submitted at the hearing in his absence and are of the opinion that the charge of insubordination was established and that there is no basis for the complaint that the carrier acted arbitrarily or capriciously in dismissing claimant from the service. The evidence shows that claimant refused to comply with a proper request of his supervisor and that he walked off the job without permission. It is immaterial that he acted in a respectful manner, or that he felt justification for his conduct because of an aversion to getting wet in cleaning the Budd car and subsequently going out in the night air. It was his duty to comply with the proper orders and requests of his superior and if he thereby felt imposed on he could thereafter progress his grievance in an orderly manner in accordance with the provisions of the applicable collective bargaining agreement. Having chosen to disregard a proper and reasonable supervisory request and to arbitrarily abandon his job, he was guilty of insubordination and subject to discipline. We can find no reasonable ground for disturbing the discipline imposed and accordingly find that this claim lacks merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 10th day of October 1960.