Award No. 3999
Docket No. 3935
2-CRI&P-EW-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Electrical Workers)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That on August 31, 1960, the Carrier improperly suspended Electrician A. H. Holloway from service pending investigation.

2. That on September 22, 1960, the Carrier unjustly dismissed Electrician A. H. Holloway from Service.

3. That, accordingly the Carrier be ordered to compensate Electrician A. H. Holloway his applicable straight time rate of pay from August 31 to September 22, 1960, account improper suspension.

4. That accordingly the Carrier be ordered to compensate Electrician A. H. Holloway his applicable straight time rate of pay from September 22, 1960, and each work day thereafter until he is restored to service account unjust dismissal.

5. That accordingly A. H. Holloway be restored to service with all seniority rights and privileges unimpaired, including vacation rights.

EMPLOYES' STATEMENT OF FACTS: Electrician A. H. Holloway, hereinafter referred to as the claimant, was employed ever since November 25, 1952 at Silvis, Illinois by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the carrier.

On August 31, 1960, at approximately 1:30 P. M., the claimant after working sometime on a 55 foot high pole, came down to rest his legs. Lead Electrician H. L. Randall instructed him to climb back up the pole. The claimant advised Randall that his legs were too tired to climb the pole, and that if he climbed the pole in this condition it would be a safety hazard. Lead Electrician Randall the instructed the claimant to climb the pole or go to the office.

was insubordinate and in violation of Rule N, carrier's Form G-147 Revised, reading as follows:

> N. Courteous deportment is required of all employes in their dealings with the public, their subordinates and each other.
>
> Employes who are careless of the safety of themselves and others, negligent, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not be subject to criticism or loss of good will, will not be retained in the service.
>
> Employes must not enter into altercations, play practical jokes, scuffle or wrestle on company property."

and that the investigation held on September 13, 1960, clearly supports the carrier's decision in dismissing the claimant from service for insubordination, as charged, under above quoted rule.

In this case, up until the claimant refused to confer with the general foreman alone, a grievance had not yet arisen and there is nothing in the current Agreement which precludes, as we have stated before, a supervisor from discussing with an employe alone matters dealing with the latter's work and attitude toward it. If Mr. Holloway had respected his supervisor's instructions and request and conferred with him and then felt aggrieved there would, of course, then have been no question of permitting him to have his representatives with him to further discuss the grievance. However, Mr. Holloway did not follow such procedure and the claimant himself brought about a situation which required the carrier to charge him with violation of Rule N, quoted above, and assess, on basis of the record, the discipline it did.

It is well settled that where the record, as here, contains substantial evidence in support of the carrier's findings and there is no showing of arbitrary action, your Board will not substitute its judgment for that of the carrier.

On basis of the facts and circumstances in this particular case, the agreement was not violated and claim has no merit and should be denied.

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 waived right of appearance at hearing thereon.

The Claimant, A. H. Holloway, was employed by the Carrier since November 25, 1952, and was an electrician in the Carrier's Silvis (Illinois) Shops at the time here relevant.

On August 31, 1960, he was assigned to work on 55-foot high pole. After having worked on said pole for some time, he came down at 1:30 P. M. and took off his climbers and belt. Lead Electrician Randall instructed him to climb back up the pole and continue his assigned work. The Claimant refused to do

this, contending that his legs hurt him too badly and that he was afraid he would fall off the pole. Randall then contacted General Electrical Foreman Steinbrink who advised him to instruct the Claimant either to climb up the pole or to report to Steinbrink. Randall related this instruction to the Claimant. The latter choose not to climb the pole but to go to Steinbrink's office. On his way, he contacted Local Chairman Brock and asked for representation at the ensuing meeting with Steinbrink. Brock granted this request. At approximately 1:45 P. M., the Claimant and three committeemen, including Brock, appeared in Steinbrink's office. The latter told the Claimant that he desired to talk to him alone and not in the presence of the committeemen. The Claimant did not do this but asked for an opportunity to talk to the committeemen privately. Steinbrink permitted this and the Claimant went to a nearby room with the committeemen. Since he had not returned to Steinbrink's office by about 2:30 P. M., the latter went to the room, stepped inside the door and asked the Claimant whether he was going to meet with him alone. The Claimant answered "not without the Committee" (Organization Exhibit A. p. 5). Steinbrink then said that a formal investigation would be held and that, as far as he (Steinbrink) was concerned, the Claimant was through. With this remark Steinbrink went away and the Claimant as well as the committeemen returned to their assigned duties.

On the following day, the Claimant was suspended from service and, subsequently, dismissed, effective as of September 22, 1960, on the ground of insubordination as provided in Rule N of Form G 147 (revised).

He filed the instant claim in which he asks for reinstatement with accumulated seniority rights and full back pay at the applicable straight time rate.

In adjudicating the claim before us, we have been guided by the following considerations:

1. It is well settled in the law of labor relations that if a labor agreement contains a formal grievance procedure, grievances may not, as a rule, be adjusted by disobedience but must be redressed by use of the procedure as agreed upon by the parties to the agreement, except if the employe has sufficient reason to believe, in good faith, that the work assigned to him or the instructions given him by his supervisor involved an unusual hazard, a substantial injury to his health, or abnormally dangerous conditions for work at the place of employment. In the absence of such exceptions, an employe who feels aggrieved for one reason or other is not normally permitted to resort to self-help but is under a contractual obligation to perform the work or to carry out the instructions, subject to his right thereafter to seek relief by invoking the grievance machinery. In other words, the use of the contractual grievance procedure is an obligatory alternative to selp-help and usually excludes any justification for resort to the latter. See Awards 8512 and 8712 of the Third Division. See also: Frank Elkouri & Edna A. Elkouri, **How Arbitration Works,** Revised Edition, Washington, D. C., BNA Incorporated, 1960, pp. 109-112 and cases cited therein; Arbitration Awards in re Republic Steel Corp., 34 LA 553, 554 (1959) and in re Sheller Manufacturing Corp., 34 LA 689 (1960).

Rule 32 of the labor agreement contains a detailed, formal grievance procedure. Since none of the exceptions indicated above is applicable in the instant case, the Claimant was bound to follow the various steps prescribed in said Rule instead of taking matters in his own hands by refusing to meet with Foremen Steinbrink alone. Even if one assumes for the sake of argument, without deciding, that he was entitled to representation by the committeeman, he was, nevertheless, contractually obligated to follow the in-

structions given him by his Foreman. If he felt that he had been unjustly dealt with by the latter or that any provision of the labor agreement was violated, his only right as clearly provided in Rule 32 was **thereafter** to file a written grievance. His persistent refusal to meet alone with the Foreman constituted a course of conduct demonstrating unjustified insubordination.

2. The legal principle that insubordination is adequate cause for disciplinary action is beyond question. Since the determination of a disciplinary penalty imposed upon an employe who has been found guilty of a wrongdoing necessarily involves managerial discretion, we have been reluctant to substitute our judgment for the of the Carrier and have consistently held that the Carrier's disciplinary action can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, excessive, or fraught with bad faith. See: Award No. 3874 of this Division and other Awards cited therein; see also: Elkouri & Elkouri, **supra,** pp. 419-421 and cases cited therein; Lawrence Stessin. **Employe Discipline,** Washington, D. C., BNA Incorporated, 1960, pp. 39-42 and cases cited therein.

The evidence on the record considered as a whole has convinced us that the Claimant's dismissal was an excessive penalty. At the time his insubordination occurred, he had been in the Carrier's employ for almost eight years. The record does not show that he was ever disciplined previously. Moreover, his insubordination was not caused by any dishonest motives but rather by a failure correctly to comprehend his contractual rights and obligations. In addition, he relied, at least in part, on the advice of the Local Chairman who did not inform him of the proper procedure to be followed under Rule 32. Finally, we regard it as a mitigating circumstance that, after the discussion with Steinbrink, the Claimant resumed his assigned duties until the end of the shift without any further protest. To be sure we do not condone the Claimant's insubordination. But we are of the opinion that a disciplinary suspension of two (2) weeks is entirely sufficient to safeguard the Carrier's right to maintain reasonable discipline as well as to demonstrate to the Claimant that his conduct was violative of Rule 32 of the labor agreement.

3. Accordingly, we hold that the Claimant shall be reinstated to his former position as electrician with accumulated seniority rights and with back pay at the straight time rate, except that no back pay shall be due to him for the period from September 1, 1960, through September 14, 1960 (both dates inclusive). From the back pay so computed, there shall be deducted any compensation which the Claimant may have earned in other gainful employment from and after September 14, 1960, until his reinstatement.

AWARD

Claim partly sustained and partly denied in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1962.