

Award No. 4072
Docket No. 4215-I
2-SP(PL)-I-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

WALTER P. McGHEE, LABORER

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEE: The particular question that I am seeking an award from this Adjustment Board is this: According to the Working Agreement that I was working under at the time, and according to the posted General Rules of the Company, was the Southern Pacific Company justified in firing me from my job on May 30, 1958, using as the sole reason Company Rule No. 801.

EMPLOYEES' STATEMENT OF FACTS: These are the facts of my case according to the working agreement and the rules of the company:

1. I was under the supervision of a labor foreman. Rule 4, Page 5 of the working agreement.
2. The labor foreman was in complete charge of the class of laborers I was classified under. Rule 7, Page 7. (d) No. 5 and 6.
3. Under the circumstances General Foreman Meridith did not have the right to fire me according to Company Rule No. 801.
4. General Foreman Meridith was breaking the terms and conditions of the working agreement when he told me that Machinist Foreman Sheehan was my foreman, and that Roundhouse Foreman Charlie Turner was my foreman.
5. Company Rule No. 801 applies to an employe who is insubordinate to the rules of the company and the terms and conditions of the working agreement, not to an employe who refuses to do what any man with the title of foreman tells him to do.
6. The second charge of insubordination the Company fired me on clearly shows that the Company officials did not possess the mental capacity to rightly interpret the meaning of the word insubordination.
7. If I had done as Foreman Turner and Sheehan said that they told me to do, General Foreman Meridith would have then gone to the labor foreman and had him fire me for violating Company Rule No. 802.

The carrier here asserts that the alleged basis for the claim in this docket is without merit and that the claim should be denied in its entirety.

CONCLUSION

Having conclusively established that the claim in this docket is without merit, carrier respectfully submits that it 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.

The parties to said dispute waived right of appearance at hearing thereon.

The record shows the petitioner instituted proceedings before this Division of the Board on March 27, 1962, appealing from a decision of the highest designated officer of the carrier rendered on September 25, 1959. The claim is barred by the provisions of Rule 32(e) of the controlling agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October, 1962.