

Award No. 4179
Docket No. 4098
2-SP(PL)-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Electrician Donald J. Hughes was unjustly discharged from the service of the Southern Pacific Company on December 9, 1960.

2. That accordingly, the Carrier be ordered to restore this employe to service with all his rights (including vacation) unimpaired and with compensation for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Prior to December 9, 1960, Donald J. Hughes, Company seniority date of November 23, 1953, and a seniority date of October 26, 1955 at Eugene, Oregon, hereinafter referred to as claimant, was assigned as electrician at Eugene, Oregon, Diesel House, working the day shift, hours 7:30 - 11:30 A. M.; 11:50 A. M. - 3:30 P. M.

Under date of November 10, 1960, claimant was instructed by letter from Master Mechanic E. F. Peters to be present at the office of Master Mechanic Peters, Eugene, Oregon, at 9:00 A. M., November 14, 1960 for a formal hearing in connection with his alleged failure to perform his duties on the diesel service track at Eugene, Oregon, approximately at 8:55 A. M., November 10, 1960.

Claimant and his General Chairman, Denver T. Johnstone, requested through Mr. Hall of Mr. Houston's office that the hearing scheduled for 9:00 A. M., November 14th, be postponed until 10:00 A. M., November 16. On November 15, it was further requested that the hearing be postponed until 1:00 P. M., November 16, 1960.

of his activities as chairman of the Local Federation of Mechanical Department employes at Eugene, Oregon, is the real reason for the investigation and not because of an act of insubordination as charged in Mr. Hughes' citation.

As heretofore noted, on November 10, 1960, the claimant was assigned and working as electrician 7:30 to 11:30 A.M.—11:50 to 3:30 P.M., and was subject to instruction of carrier's supervisors who were charged with the responsibility for preparing locomotives for service. The claimant was definitely and positively instructed by carrier's supervisors to sequence-test three diesel units and he refused to do so, the work subsequently being performed by another electrician in a period of approximately five minutes.

Since the claimant was on duty, as an electrician, he was not at liberty to refuse to perform the duties of his occupation as instructed by his supervisors. He was insubordinate in his refusal, the offense constituting a violation of carrier's Rule 801.

The claimant's organization affiliation had nothing whatever to do with carrier charging him for being insubordinate or dismissing him from service. There are many employes in carrier's service who hold office in their respective brotherhoods and work at their occupations, but this does not relieve them of complying with carrier's rules and with the instructions of carrier's supervisors while they are on duty, or clothe them with an umbrella of immunity from the penalty assessed against any employe refusing to perform service as instructed. To hold otherwise would not only create an intolerable situation, but would unduly restrict the right of management to efficiently operate its railroad.

The carrier here asserts that all of the alleged bases for the claim in this docket are 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.

Parties to said dispute waived right of appearance at hearing thereon.

At the outset, in support of claim that Electrician Donald J. Hughes was unjustly discharged by his employer, the Southern Pacific Company, it is contended by the organization that "two improper hearings were held on the claimant, the first by Assistant Master Mechanic Atkinson on November 10, 1960." To the contrary, as to this contention, the record not only shows that Assistant Master Mechanic Atkinson urged claimant to perform the work

assigned to him, but that claimant nevertheless persisted in his refusal to obey instructions. The second alleged improper hearing was said to have been due to the fact that the Master Mechanic, who was acting as hearing officer, was assisted by the Assistant Superintendent of the Mechanical Department. Such aid in the conduct of a hearing is not considered objectionable nor a violation of the agreement of the parties. See First Division Award 17007.

Throughout employees' original submission and rebuttal it is strongly urged that carrier's charges against claimant were not sustained. Among other contentions, it is argued that under Rule 49(a) of the Agreement of April 16, 1942 (Reprinted April 19, 1957, Including Revisions) claimant did not have to work in a heavy downpour of rain. However, according to the record, the task assigned, a sequence test, would have been made under cover and could have been accomplished in five minutes. And as was said in Award 2715 (Referee D. Emmett Ferguson):

“. . . the reluctance and refusal of the grievant to obey the order of his supervisor was insubordination. In clear and present cases of danger an employe should properly be permitted to decline a task which would imperil his life or limb. In doubtful cases the employe should point out the risk and having registered his protest should then proceed to do the ordered chore. To avoid a repetition, or to resolve the disputed practice, he should follow up by filing a grievance showing wherein the rules have been violated. His duty under the circumstances is thus discharged. The supervisor is the one primarily responsible then, and the employe does not have to elect himself as the principal guardian of everyone's safety.”

See also Second Division Awards (Referee Adolph E. Wenke) 1542; 1543; 1544; 1547 and 1548.

In addition, claimant contends he was not subject to carry out the work order given, because he, as Local Chairman of the Electrical Workers at this point, was on Committee work at the time. As to this contention the evidence is conflicting and carrier maintains, to the contrary, that claimant did not make a request to be relieved to perform Committee work until sometime after 8:55 A.M. following the arrival of Mr. Atkinson, the Assistant Master Mechanic, and after claimant had more than once refused to perform the work assigned. It is an established principle that it is not the function of this Board to weigh the evidence (among many others, Award 2207).

There are still other arguments advanced that claimant did not have a fair hearing, that the record does not show that he was insubordinate and that the discipline assessed was without just cause. Having examined them in detail, in the light of all the evidence contained in an unusually complete record, we find them without convincing support or not prejudicial to claimant's rights.

From the record, considered in its entirety, we find that claimant was accorded a full and fair hearing with every opportunity to present his defense to the charges he was called upon to answer; that substantial evidence was adduced to sustain carrier's findings as to insubordination and that the penalty assessed was not arbitrary, capricious or unwarranted. As was said by this Board in Award 3894:

“Orderly, efficient, and safe operations among all employes are seriously threatened when insubordination goes unpunished; that is, proven insubordination is a serious offense, and it may not be ruled that discharge is too heavy a penalty therefor.”

And, as held in that award, we cannot here find a proper basis for substituting our judgment for that of carrier. Therefore, the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1963.