

**Award No. 4454  
Docket No. 4370  
2-AT&SF-CM-'64**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

"1. That under the current agreement Carman Victor S. Duczman was unjustly dismissed from the service of the Carrier on January 26, 1962 at 3:00 P. M. at Chicago, Illinois.

2. That accordingly the Carrier be ordered to reinstate the Claimant with his seniority, vacation, hospital and insurance rights unimpaired and also that he be additionally compensated at his applicable hourly rate of pay for all time lost retroactive to 3:00 P. M., January 26, 1962, and to continue on the same basis until he is returned to service."

**EMPLOYEES' STATEMENT OF FACTS:** Victor S. Duczman, hereinafter referred to as the claimant, was employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, as a carman at Corwith, Chicago, Illinois, where the carrier maintains a repair track and forces.

The Claimant was regularly employed, bulletined and assigned as a carman on the repair tracks on the first shift, work week of Monday through Friday, rest days of Saturday and Sunday.

On December 18, 1961, the claimant was given notice to appear for investigation in the office of the master mechanic at 9:00 A. M., Wednesday, December 27, 1961, in regard to his alleged insubordination on December 5, 1961, alleging violation of Rule 20 of Form 2626 Standard, General Rules for the Guidance of Employees.

Finally, and on January 12, 1962, the investigation was held, and on January 26, 1962 at 3:00 P. M. the claimant was dismissed from service, which was prior to the claimant's regular quitting time.

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, who all have declined to make satisfactory settlement.

The hearing was once postponed at his request. He was represented by the representative of his choice and arrangements were made to have present at the investigation the witnesses of his choice. Decision was rendered without undue delay after completion of the hearing,

2. No mitigating circumstances were present as grounds for leniency, and

3. The record justified the discipline administered. Claimant was guilty of insubordination.

**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.

Victor S. Duczman, the claimant, was initially hired by the Carrier on February 6, 1936, as a Car Laborer at Corwith, Chicago, Illinois and he had worked in various positions and had returned to work after a number of furloughs which had occurred subsequent to his employment and prior to December 5, 1961, the date on which the Carrier alleges that he was insubordinate to his supervisors. On the date last mentioned he was working as a Car Inspector at the Carrier's Corwith repair track and he was also serving as the Local Chairman for the employes. The Claim submitted to this Board is for reinstatement with seniority, vacation, hospital and insurance rights unimpaired and for compensation at the applicable hourly rate of pay for all time lost retroactive to 3:00 P. M., January 26, 1962, because Claimant alleges that the dismissal for insubordination which he suffered was improper.

The record discloses that on the morning of December 5, 1961, Foreman J. A. Manrique gave to Claimant a slip of paper, or note, which outlined the work which Claimant was to do that date on Tracks 4-3-2- and 1. Claimant admits that the note from his foreman contained his work instructions for the day and that he was to perform the work in accordance therewith. He also admits that he did not follow the instructions of the note but instead, and on his own initiative, went to the immediate supervisor of his foreman, Assistant Car Foreman John Myscofski, to complain about the unsafe instructions. Mr. Myscofski also directed Claimant to get a car mover (pinch bar) and to separate the two sets of cars on Track No. 4, which were coupled in pairs, and after separating them he should inspect all four cars as well as inspect some single cars on Track No. 3; these were the same instructions that Claimant had received in writing and verbally from his foreman.

It is not disputed that Claimant insisted that the work in question was unsafe; however the evidence shows that the practice of doing exactly the same thing at this location has been in existence for almost 38 years. Moreover there was no convincing evidence offered by the employe that tended to show that the operation was, in fact, unsafe.

We believe that the statement of Car Inspector Duczman, which we quote below and which he made at his formal hearing on January 12, 1962, when taken with the other facts which we find in the record and which we will discuss later, shows that the Claimant did not subordinate himself to his supervisors.

“Question: What was your instructions from Mr. Myscowski?”

Answer: Well, Mr. Myscowski asked me to get a car mover and Mr. Myscowski said, I want you to get a car mover and move these cars, and I said I can't John, and then he asked me again, I am telling you to move these cars, I said John I can't. To my knowledge this is all that happened.”

We also are of the opinion that the Carrier's supervisors should have been more definite and positive in their instructions to the claimant so that he would have had no doubt as to what he was being ordered to do. Had Messrs. Manrique and Myscowski told claimant that their prior orders were to stand and that the conversation between them was finished he would have been absolutely sure that he must perform the work according to their instructions or else subject himself to possible disciplinary action. The latter fact would particularly be within his knowledge since he was Local Chairman for the employes. Instead of doing what is suggested above the record discloses that in each instance the conversation with the supervisors was left slightly hanging and somewhat uncertain about what was to happen next.

Because claimant did not subordinate himself to his supervisors we find that the carrier could properly impose a severe penalty upon him. However we also believe that the record shows that there were other factors which are pertinent and which should be given consideration, i.e., the claimant was well known on the property as being a strong willed person and one who was likely to argue, he also was an employe with an exceptionally good discipline record. Likewise the incident occurred on December 5, 1961; however, the notice to claimant of the formal hearing on charges that he was insubordinate was not delivered to him until December 18, 1961, the same date on which claimant, as Local Chairman, formally complained that work of the type which he did not perform was unsafe and that the other employes wanted some form of relief from having to do it. Then too, claimant was not suspended from work until January 26, 1962, the date of his dismissal.

If the Carrier is to maintain order and efficiently operate its business it must have the power to direct its working force. To accomplish this end it is sometimes necessary, and proper, to mete out punishment to certain employes who have violated the rules and regulations of the Carrier in order to impress upon those employes the necessity for following the accepted standards of conduct and/or rules of the business. Dismissal of an employe, like capital punishment in our society, is the ultimate punishment available. It should not be, and the record does not disclose that it was, treated lightly.

This Board does not have the right, morally or legally, to substitute its judgment for that of the Carrier. It can only overrule an act of the Carrier when it believes that the Carrier has acted arbitrarily and/or unreasonably in dealing with an employe. In the instant case we are of the opinion that in the sense that this Carrier acted in a “decisive but unreasoned manner” it was arbitrary and in the sense that it acted “immoderately” it was unreasonable. (quoted portion from Webster's New Collegiate Dictionary.) Moreover, for the seriousness of the offense, we believe that the Carrier was somewhat dilatory

in taking action against the Claimant, which leads us to believe that even the Carrier thought that this is no ordinary situation; however, it must be remembered that the Claimant did not subordinate himself to his supervisors, nor did he perform the work in accordance with the written and verbal instructions which he had received.

Because of the particular facts involved in this case which we have discussed above, we are constrained to find that the best interests of all concerned can be served if Car Inspector Victor S. Duczman is restored to his former position with full seniority rights and with the vacation rights which were accrued at the time of his dismissal but with no compensation for the time which he lost from work nor payment for any hospital or insurance rights or benefits which he claimed.

#### AWARD

Claim sustained 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 28th day of February 1964.