

Award No. 4672

Docket No. 4549

2-NP-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Bernard J. Seff when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. Claim of J. J. Hogan and K. C. Maust were unjustly suspended for ten days each, from April 13, and extending through April 24, 1962.

2. That accordingly the Carrier be ordered to compensate these employes for time lost.

EMPLOYEES' STATEMENT OF FACTS: J. J. Hogan and K. C. Maust are employed as car inspectors at Auburn yard, Auburn, Washington, having established a seniority date as Carmen.

J. J. Hogan — September 20, 1953

K. C. Maust — January 24, 1955

On February 21, 1962, Master Mechanic C. H. Moreau addressed a letter to J. J. Hogan and K. C. Maust.

On February 26, 1962, an investigation was held with J. J. Hogan, K. C. Maust pursuant to Master Mechanic C. H. Moreau's letter of February 21, 1962.

On April 6, 1962 J. J. Hogan and K. C. Maust were advised that they were suspended from service for ten days. The suspension to commence April 13 and extending through April 24, 1962. Master Mechanic C. H. Moreau's letter of April 6, 1962, advised J. J. Hogan of his suspension from the Railway Company. A similar letter was directed to Carman Maust.

POSITION OF EMPLOYEES: The records in this dispute do not support the carrier's contention that Carmen J. J. Hogan and K. C. Maust, referred to as the claimants, were guilty of being insubordinate, discourteous, not alert, not devoting themselves exclusively to the company's service and not comply-

were represented by a committee of three at the hearing; the charges preferred against Messrs. Hogan and Maust were sustained by the evidence developed at the investigation conducted on February 26, 1962; and the discipline was unreasonable under the circumstances. In accordance with the well-established nonintervention principle adopted by this Board, the discipline assessed Messrs. Hogan and Maust should not now be removed.

Rule 39 of the July 1, 1955 Shop Crafts' Agreement reads in part:

"If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority right unimpaired and shall be compensated for wage loss, if any, resulting from said suspension or dismissal."

Messrs. Hogan and Maust were not found blameless. They were derelict in the performance of their duties on February 20, 1962 and consequently were amenable to discipline. The discipline assessed was neither excessive nor capricious. The charges preferred against these employes were amply sustained by the evidence developed at the investigation. Therefore, these employes were not unjustly suspended from service and they are not entitled to be compensated for wage loss pursuant to the above-quoted portion of Rule 39.

The claim covered by this docket should be denied in its entirety.

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.

The Claimants, Hogan and Maust, are car handlers who had the responsibility of checking certain trains that were laden with boats destined for Seattle.

The trains in question had boats loaded with their sterns to the front of the trains. There is a written instruction issued by the Superintendent which states that all cabin cruisers and small motorboats are to be loaded with their bows to the front. The two carmen refused to OK the trains on the ground that they had written instructions as to how the boats were to be loaded which were in direct conflict with oral instructions given the men by the Yardmaster and Assistant Yardmaster. The employes stated they would OK the trains only if the Yardmaster gave them written instructions to this effect. As the result of the claimants' refusal to obey the oral instructions the trains in question were delayed for more than an hour.

The boats arrived in a slightly damaged condition but the Carrier contends there is no proof that the position of the boats either caused or contributed to the damage. The Carrier charged the employes with insubordination for refusal to obey the express oral instructions given them. They were penalized by being given ten day suspensions.

The dictionary definition of insubordination is a refusal to obey orders. The Claimants did refuse to obey orders and by so behaving they were resorting to self help. If employes may refuse to obey orders with impunity such a course of action would be destructive of discipline. A railroad cannot be run efficiently if its employes can refuse to obey orders given them by their superiors.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.

DISSENT OF LABOR MEMBERS TO AWARD NO. 4672

If there was any insubordination in this case it was on the part of the Yardmaster who gave oral instructions to the claimants, which instructions were in direct conflict with written instructions previously issued by the Superintendent—the Yardmaster's superior officer. Written instructions of a superintendent take precedence over oral instructions of a yardmaster. That the Yardmaster knew his oral instructions were wrong is shown by the fact that he refused to issue written instructions; had he done so the claimants stated they would have been willing to follow them.

On the other hand it would have been a simple matter to turn the cars so that the bows of the boat were in the direction of the train movement and thus in compliance with the written instructions of the Superintendent. In spite of every effort on the part of the claimants to have this done they were arbitrarily suspended by the carrier when the boats arrived at their destination in a damaged condition. If the written instructions of the Superintendent had been followed the railroad would have been run much more efficiently.

E. J. McDermott

C. E. Bagwell

T. E. Losey

Robert E. Stenzinger

James B. Zink