

Award No. 5038

Docket No. 4935

2-C&NW-CM-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE CLAIM OF EMPLOYEES:

1. That under the current agreement, Car Inspector N. A. Zemke was unjustly dismissed from service by the Carrier on January 8, 1945.
2. That accordingly Carrier be ordered to reinstate Car Inspector N. A. Zemke to the service with all rights unimpaired including seniority and vacation rights and health and welfare and life insurance benefits and compensate him for all time lost account the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Car Inspector, N. A. Zemke, hereinafter referred to as the claimant, was employed by the Chicago and North Western Railroad, hereinafter referred to as the carrier, since April 10, 1950 at North Fond du Lac, Wisconsin. On December 29, 1964, train #295 arrived late into the yards. The claimant placed a blue flag on the track on which train #295 arrived, to make his usual routine inspection of cars arriving in this train. While making this inspection of cars, Trainmaster Robertson arrived and ordered claimant to remove the blue flag from that track, although he did not tell him to forgo the inspection of the cars. Since all the rules that claimant is working under, including safety rules put out by the carrier prohibit any employe from working in and around cars without the protection of a blue flag, the claimant inquired of the Trainmaster, if he was agreeable to put that order in writing, which would then give the claimant the right to forego the inspection of these cars in train #295, and the reply he received was, the claimant was being insubordinate and ordered the claimant to follow him into the shanty. The claimant did as instructed.

The carrier directed the claimant to appear for an investigation and hearing at 9:00 A.M. January 7, 1964, on charges of alleged insubordination while talking to Mr. L. A. Robertson, trainmaster at North Fond du Lac, Wisconsin on December 29, 1964.

The investigation was held as scheduled.

that the rule makes no provision for payment of health and welfare and life insurance benefits, or for that matter, for vacation rights. In this respect, the claim in this case constitutes in part a request for a new rule, which is beyond the jurisdiction of the board. This board's authority is limited to interpretations of existing rules, and does not extend to promulgating new rules under the guise of interpretation of existing rules. See Second Division Award No. 3883.

The carrier submits that in view of the positive testimony of claimant of his refusal to comply with instructions, the positive testimony of the trainmaster and the mechanic-in-charge that claimant refused to comply with instructions, the discipline assessed was entirely justified. The carrier submits that the claim in this case 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claim, a car inspector with almost fifteen years of service, was dismissed for insubordination. There is no question but that he was insubordinate since the record is clear that he refused to comply with direct and unambiguous orders of a trainmaster to discontinue the use of the blue flag in making cross key inspections on the day in question.

Rule 31 of the applicable agreement, which prescribes that "Trains or cars while being inspected or worked on by train yard men will be protected by blue flag by day and blue light by night, which will not be removed except by men who place same," does not relieve claimant from the obligation of obeying orders. It is his plain responsibility to comply promptly with instructions of supervisors, whatever he may think of their validity or wisdom. This duty is an inherent condition of his employment and will be strictly enforced. If Claimant is of the opinion that the orders violate applicable regulations, he must nevertheless follow the orders without delay where, as here, it is not established that they involve any moral failure or physical hazard; his remedy is to test their propriety by subsequent use of the orderly grievance machinery provided for in the Agreement. These principle are essential to efficient railroad operations and we consider insubordination a most serious dereliction of duty.

Such extreme discipline as discharge seems arbitrary and excessive in this case, however, since Claimant's prior record of conduct is unblemished and some confusion may have existed in view of the requirements of Rule 131 and General Car Foreman McDermott's letter of December 19, 1964.

This Board will not substitute its judgment for that of management in assessing discipline but must reduce the amount thereof where Carrier's action is found to arbitrary or capricious. A layoff without pay of more than two years' duration amply reflects the gravity of Claimant's offense and we will

direct Carrier to reinstate Claimant immediately to the position he occupied at the time of his discharge but without compensation or health and welfare or life insurance benefits for the period during which he was withheld from service.

AWARD

Claimant reinstated with seniority and vacation rights unimpaired but without pack pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1967.