



Award No. 5167

Docket No. 4980

2-WM-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. 30, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

WESTERN MARYLAND RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) That the Western Maryland Railway Company, hereafter referred to as the carrier, unjustly suspended Carmen P. R. Emerick and J. A. Sneathen, hereafter referred to as the claimants, for 30 days for discriminatory and capricious reasons.

(2) That the claimants be compensated for all time lost during the time of suspension from April 27, 1964 through May 26, 1964, inclusive.

EMPLOYEES' STATEMENT OF FACTS: The claimants were regularly employed as car inspectors in the carrier's Knobmount, West Virginia, transportation yard, on March 14, 1964, the date giving rise to the instant claim.

Under date of March 27, 1964, a statement was taken from the claimants by Car Foreman H. E. Hammer on the charge:

"Insubordination at Knobmount on March 14, 1964, in working of train AJ-2."

The claimants were suspended from duty from April 27 through May 26, 1964, inclusive.

As a result of the suspension Claimant Emerick lost a total of \$687.60 in compensation, and Claimant Sneathen lost a total of \$551.70 in compensation.

This dispute has been handled with all officers of the carrier designated to handle such disputes, all of whom have declined to make satisfactory adjustment.

"... The evidence shows that claimant refused to comply with a proper request of his supervisor and that he walked off the job without permission. It is immaterial that he acted in a respectful manner, or that he felt justification for his conduct because of an aversion to getting wet in cleaning the Budd car and subsequently going out in the night air. It was his duty to comply with the proper orders and requests of his superior and if he thereby felt imposed on he could thereafter progress his grievance in an orderly manner in accordance with the provisions of the applicable collective bargaining agreement. Having chosen to disregard a proper and reasonable supervisory request and to arbitrarily abandon his job, he was guilty of insubordination and subject to discipline."

In First Division Award 9217 it was stated:

"... The railroad industry is quasi military in the sense that an employe must generally obey orders of his superior and make complaint afterwards if he thinks the rules have been violated."

In Award 14972 the First Division held:

"To sustain this claim would simply be to condone an employe's taking the law into his own hands to enforce what he considered to be his contractual rights instead of following the contract procedures to obtain redress for a violation thereof. It is well settled that the carrier has the authority to direct the working force, and if an employe considers such directions as violative of his contractual rights he, nevertheless, has a responsibility to perform the service as directed and has a contractual right to file a claim or grievance to obtain redress for the alleged violation.

To hold otherwise would make each employe the final arbiter of his own interpretation of the agreement, which could only result in chaos."

Based on the claimants' own statements, there is substantial and convincing evidence that they willfully and deliberately refused to comply with instructions from the Foreman. The investigation was conducted in a fair and impartial manner and in accordance with schedule requirements. The claimants were represented by a Committeeman of their craft, and were given full opportunity to present their case. The offense was a serious one, and thirty days' suspension was not unreasonable or arbitrarily imposed.

(Exhibits not reproduced.)

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.

This dispute concerns thirty-day suspensions of two carmen.

Both Claimants appeared and were well represented at the hearing that was held in this matter and were afforded a fair opportunity to develop their cases and examine and cross-examine witnesses. Although they claim that several employees were not called as witnesses, there is no indication that they were prevented by Carrier from bringing them in and calling whatever witnesses they considered necessary (see Third Division Award 13643). We are satisfied that the record is free from prejudicial error.

The record contains credible evidence, consisting of testimony by Assistant Car Foreman Rice, that supports Carrier's findings that Claimants did not comply with unambiguous and reasonable instructions that he had given them. ants, we are mindful of the well-settled principle of this Board that in disciplinary cases, we are not free to weigh conflicting versions and determine credibility, but must uphold Carrier's findings of fact if they are supported by credible, though disputed, evidence. (See Third Division Awards 10791 and 9046).

There is no evidence of any undue provocation by Rice or that the instructions would have subjected Claimants to any improper hazard. The correct procedure was for Claimants to comply with Rice's instructions and thereafter, if they desired to do so, to test their validity through the orderly channels of the grievance machinery. Any contrary procedure that would permit each employee to determine whether or not a supervisor's instructions are proper would make for chaos and cannot be sanctioned.

The discipline does not appear to be arbitrary or capricious and the claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1967.