

Award No. 5972
Docket No. 5785
2-SP(T&L)-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Pacific Company (Texas and Louisiana Lines), unjustly dismissed Equipment Installer M. S. Reeves from service in violation of the terms of the current agreement.

2. That accordingly, the Southern Pacific Company (Texas and Louisiana Lines), be ordered to restore Equipment Installer M. S. Reeves to service with his seniority unimpaired and pay for all time lost, as a result of his dismissal, subsequent to and including May 27, 1968.

EMPLOYEES' STATEMENT OF FACTS: Equipment Installer M. S. Reeves, hereinafter referred to as the claimant, was regularly assigned as such in the communications department of The Southern Pacific Company (Texas and Louisiana Lines), hereinafter referred to as the carrier, for a period of approximately twelve (12) years. He was also holding the position of local chairman for the employees of the communications department.

On May 17, 1968, the carrier filed charges against the claimant, alleging he may be in violation of Rules 1022 and 1023 of the rules and regulations for the maintenance of way structures. After the investigation was concluded, the claimant on this same date was dismissed from service.

This dispute was a result of a claim that the claimant progressed to Equipment Foreman A. J. Lazarine under date of December 21, 1967.

This dispute has been handled with all officers of the carrier, up to and including the highest officer designated to handle such matters, with the result that all declined to make a satisfactory settlement.

The agreement effective January 1, 1968 is controlling.

suit against the carrier for personal injury. Mr. Reeves was reinstated on a leniency basis after a plea of leniency by Mr. Reeves and Local Chairman H. V. Millard.

When the falsification case of March, 1963 is coupled with the instant insubordination case, it was imperative that Mr. Foster assess the measure of discipline of permanent discharge to Mr. Reeves. Such procedure is consistent with many awards of the four divisions of the board. See Third Division Awards 2978, 2498, 430, 562, 1587, 1599 and 2440; and First Division Awards 12428, 12429, 12880, 13634, 14095, 14049, 16265, 16358 and 14864.

CONCLUSION

It is clearly apparent that supervision of this carrier did everything possible to convince Mr. Reeves that he should go along with his supervisors' instructions to splice cable, a job that he had done many times and, in fact, had performed four splices the day before on the same job, and even after he had been charged with the offense, a conciliatory effort was made toward him to convince him that he should meet his responsibility; however, in every instance he was adamant in his position that he would not perform the work in question. This is a flagrant case of insubordination, and it becomes more aggravated when we consider the fact that the claimant and the general chairman's main argument before the hearing officer during the investigation was that Mr. Reeves was qualified to do the work and the work in question fell within the scope of his assignment. He was given a fair and impartial investigation which proved violations of Rules 1022 and 1023 of the Rules and Regulations for the Maintenance of Way and Structures of the Southern Pacific Company, Texas and Louisiana Lines, by being indifferent in the performance of his work and he did not exercise gentlemanly deportment in his dealings with his supervisors. He was definitely insubordinate. It is submitted that Mr. M. S. Reeves was properly discharged; on the other hand, should the board disagree with the carrier's position in this regard and erroneously reinstate the claimant to the service with pay for time lost, then in that event, the carrier requests the board to deduct compensation made by this employe during the interim period in other employment or self-employment for pay allegedly lost by this person while in discharge status from this carrier.

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.

By his actions on May 17, 1968, in failing to comply with the orders of Equipment Foreman Lazarine and Assistant Superintendent Edwards to splice plastic cable (making it known to both officials that he would not respond to said directions unless and until he was instructed in writing to do so by Assistant General Superintendent Foster, claimant patently was insubordinate.

The circumstance that he had already completed four plastic cable splicings on May 16 makes his willful refusal on the following day to work as directed all the more glaring.

Although his stubborn insistence to refrain from splicing plastic cable, pending receipt of written authorization from Foster was conducive to developing support for the separate grievance filed by claimant concerning his right to be assigned to splice lead cable with plastic cable, it did not serve to rationalize the insubordination with which he was charged.

As Local Chairman for Communication Department employes represented by the IBEW, claimant should have been aware that insubordination cannot be tolerated. His actions in the instant situation are a total rejection of his functions as a responsible Union official. He should have known that an adequate grievance procedure is available for handling complaints, and that self-help cannot be resorted to with impunity.

Neither is it prejudicial for Foster (the official who filed the charges against the claimant) to serve as Hearing Officer, nor is evidence of reversible error otherwise discernible in the transcript of investigation. See Award 4001, National Railroad Adjustment Board, Second Division.

Claimant was afforded a fair and impartial investigation, and on the record in this case, he is proved guilty as charged of insubordination and violation of Rules 1022 and 1023. Accordingly, he is properly vulnerable to discipline.

A review of claimant's employment record (extending over a period of about 12 years), discloses that on a previous occasion in May, 1963 he was discharged, and some two months later, reinstated on a leniency basis. In this setting, Carrier's decision that discharge is the appropriate penalty for the instant infraction may not be characterized as an unwarranted distortion of Management's right to discipline for just cause.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1970.