

Award No. 6027

Docket No. 5813

2-RF&P-CM-'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. 41, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That the charges contained in investigation held in the Master Mechanic's office, Potomac Yard, 3:00 P.M., Tuesday, January 2, 1968, were not true and were not proven.

2. Accordingly, Mr. Palmateer is entitled to be compensated for all time lost as result of said discipline in the amount of eight (8) hours' straight time rate for each of the following dates: February 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29 and March 1, 1968.

EMPLOYES' STATEMENT OF FACTS: The Richmond, Fredericksburg and Potomac Railroad Company, hereinafter referred to as the carrier owns and operates a large facility at Alexandria, Virginia known as Potomac Yards, consisting of shop track, diesel house, transportation and classification yards, where cars are switched, repaired, classified and cars are interchanged from other roads to the R.F.&P. lines, 24 hours a day, 7 days a week, where a large number of carmen are employed and hold seniority under Rule 28 of the Shop Crafts Agreement.

Carman J. L. Palmateer, hereinafter referred to as the claimant, was regularly assigned at the shop track, second shift, 4:00 P.M. to 12 Midnight, workweek Thursday through Monday, rest days Tuesday and Wednesday. Claimant was notified by letter to appear for investigation to be conducted in the office of the Master Mechanic, Potomac Yard, Tuesday, January 2nd, 1968 at 3:00 P.M. and charged with "Failure to carry out instructions of Gang Foreman at Car Shop on December 25, 1967."

Investigation was held as scheduled.

to obey orders is a serious offense which ordinarily results in dismissal. Discipline of 30 calendar days in this case was, in carrier's opinion, lenient and was not arbitrary, capricious or unreasonable. It is respectfully requested, therefore, that the claim be denied.

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.

The significant question is not whether enough time remained on his regular tour of duty when claimant and his partner were directed by their foreman to put a coupler into a box car, but rather is claimant guilty of failing to comply with instructions, and if so, is the penalty excessive.

By claimant's own testimony he admits that he did not begin the job when directed to take it on, but instead went to the restroom. On his return, when again confronted with the work order, claimant told the foreman that he would not put in the coupler because, in his words, "We don't have time." Then too, he told his teammate, Car Repairman Starnes to knock off despite the fact that shift time had not run out. Starnes had already started to perform the work by going back under the car and hooking up the top rod.

On this record claimant stands guilty as charged and is subject to discipline. Considering that the job required the services of the two Car Repairmen, and that Starnes has accepted the order and proceeded with the work, Starnes' shortcoming, in taking an early quit, is readily distinguishable from the claimant's indiscretion.

Patently, insubordination is a serious misdeed. So long as the penalty is neither arbitrary, capricious or discriminatory, nor disproportionate to the offense, the circumstance that some one else may have imposed a lighter penalty, were he to make the decision in the first instance, is not a sufficient reason to overturn or modify Management's determination of appropriate punishment.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1970.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.