

Award No. 6033

Docket No. 5883

2-A&S-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 154, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

THE ALTON & SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Paul Larsen and George Brindley were improperly suspended October 1, 1968 through October 10, 1968.

2. That accordingly, the Carrier be ordered to compensate Carman Larsen for forty-two (42) hours and forty-five (45) minutes, and compensate Carman Brindley for fifty (50) hours and forty-five (45) minutes.

EMPLOYEES' STATEMENT OF FACTS: A short time prior to August 1, 1968, the Alton and Southern Railway Company, hereinafter referred to as the carrier, initiated a program to add three tracks to its gravity fed classification yard. In so doing, tracks 007, 008 and 009 were raised to grade which amounted to a maximum of four feet. Before the ballast was regulated this created an extremely hazardous place to inspect and work cars or trains.

On or about August 1, 1968, Local Chairman Cox and Vice-Chairman O'Dell confronted General Car Foreman W. N. Larson about the complaints of the men of the unsafe condition working these tracks. After checking into the complaints and handling with transportation officials, Mr. Larson notified Local Chairman Cox that carmen would not be required to work cars and trains on tracks 007, 008 and 009. Subsequent to that date, trains that entered the yard on these tracks were moved to other tracks before carmen worked them.

However, at about 2:00 A. M., on October 1, 1968, a train entered the yard on track 007. The carmen on the 11:59 P. M. to 7:59 A. M. shift refused to work it there. This matter was called to the attention of General Foreman Larson at the beginning of the day shift, 7:59 A. M. At about 12:00 noon on that day, Carmen Paul Larsen and George Brindley, hereinafter referred to as the claimants, were instructed by Car Foreman J. Grimont to work the train on track 007. They refused to do so due to the unsafe condition exist-

action of the carrier's supervisory officer in suspending the employe pending an investigation where the employe is charged with insubordination.

In the instant claim, both car inspectors were suspended pending an investigation for failure to comply with instructions of Car Foreman Grimont to bleed off a cut of cars in Track 007. Claimants were given a fair and impartial investigation. On the basis of the testimony developed at the hearing, claimants were found guilty of insubordination. Discipline was assessed in the form of suspension during the period pending investigation and decision following the investigation, a period of five days for Claimant Larsen and six days for Claimant Brindley. This is indeed extremely lenient in the face of the seriousness of the offense. The discipline certainly is not harsh or excessive.

As stated in Award 4672:

"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."

The discipline administered in this case was necessary to the successful operation of the railroad. There is no basis for your board overturning the action of those responsible for the successful operation of the railroad. The claim should 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.

Sometime prior to August 1, 1968, Carrier started a program to add three tracks to its Classification Yard. In so doing, tracks 007, 008 and 009 were raised to grade amounting to a maximum of four feet. The Organization contends that before the ballast was regulated, this created an extremely hazardous place to inspect and work cars and trains.

On or about August 1, 1968, the Local Chairman and Vice-Chairman discussed with the General Car Foreman Larson the complaints of the employes relative to what they regarded as unsafe working conditions on tracks 007, 008 and 009. The General Car Foreman subsequently notified the Local Chairman that Carmen would not be required to work cars and trains on these tracks.

At approximately 2:00 A. M., on October 1, 1968, a train entered the yard on track 007. The Carmen on the 11:59 P.M. to 7:59 A. M. shift refused to work the train on track 007. This was called to the attention of the General Car Foreman at the beginning of the 7:59 A. M. shift. At about 12:00 Noon on that day, the Claimants were instructed by Car Foreman Grimont to work the train on track 007. They refused on the grounds that the working conditions were unsafe. Mr. Grimont reported this fact to the General Car Foreman, who

had previously told the General Chairman that the employes would not be required to work these tracks because of unsafe conditions. The General Car Foreman told Mr. Grimont to send the Claimants home, which he did. An investigation was held the result of which was that they were found guilty of insubordination. Pending investigation, they had been suspended with consequent loss of hours worked, and it is for the loss of time that the claim has been submitted.

A review of the transcript of hearing reveals the following testimony:

"Questions by Mr. Cox.

Q. Mr. Grimont, what time did this cut come in about?

A. It came in at approximately 2:00 A. M. that morning.

Q. Was you notified that at midnight the third shift men would refuse to bleed 007 off account of it was unsafe to work?

A. Yes.

Q. What action did you take when you started work that morning at 7:59?

A. I called Mr. Larson and informed him that there was a cut in 007. He informed me that he would take care of it.

Q. Do you recollect other instances they have pulled cars out of 007 and put in other tracks to be inspected and bled off?

A. This has been done but not when I was on duty.

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Q. In your opinion, Mr. Grimont, do you think 007 is a safe track to work on in inspecting and bleeding off?

A. No.

Questions by Mr. Larson.

Q. Mr. Grimont, you previously stated Track 007 is not a safe place to work—how would you appraise it, in your opinion, as to its workability?

A. It could be worked but it is a hazardous condition.

Questions of Mr. O'Dell by Mr. Cox:

Q. Mr. O'Dell, approximately August 1, did you and myself confront Mr. Larson, General Car Foreman, about the conditions in 007 and 008 and Mr. Larson in turn told us that he'd see Mr. Griffin and Mr. Griffin said they wouldn't put any more cuts in them tracks until these tracks were straightened out and safe to work in?

A. Yes we did.

Q. And to your knowledge they have pulled cuts out of them tracks and put them in other tracks to be bled off and inspected because of the unsafe condition in 007 and 008?

A. Yes.

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Q. Mr. Milkert, what is your position with the A & S Railway?

A. Superintendent of Equipment.

Q. Have you made an inspection of track 007 and area recently?

A. Yes sir.

Q. How would you appraise it as to its workability?

A. The track would be somewhat difficult but not impossible to work provided safe measures were taken with the realization that the ballast was not as smooth as we would like to have it and the difference in elevation between tracks 007 and 006.

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Questions by Mr. Cox.

Q. Mr. Larsen, why did you refuse to bleed 007?

A. Because I did not wish to place myself in an unsafe position.

Q. Mr. Larsen, did you notify me of the unsafe condition, say two months ago approximately?

A. Yes.

Q. And what was the answer I gave you two days later?

A. You told me that Mr. Larson told you and Bill O'Dell, due to the fact that track 007 was unsafe to perform our duties, we did not have to bleed the track off.

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Questions by Mr. Cox.

Q. Mr. Brindley, why did you refuse to bleed 007?

A. I refused to place myself in an unsafe position performing my work.

Q. Mr. Brindley, did you also notify me of the unsafe condition in 007 a couple months ago?

A. That is right.

Q. For the records, what did I say to you a few days later?

A. Mr. Cox informed me that Mr. Larson said that we wouldn't have to work in 007 and 008 due to the unsafe conditions.

Q. Mr. Brindley, did you have a close call working 007 at one time or another?

A. Yes sir.

Q. In your words could you tell me how this happened?

A. As I was working 007 there was a cut in 006 and it was being shoved to the Hump, and there was loose banding protruding from car doors and I had a difficult time pulling myself in the clear by grabbing a hold of cars on 007 due to loose ballast on 007, and this incident was reported to Mr. Ross.

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Questions by Mr. Larson.

Q. Mr. Larsen, according to Mr. Grimont the track was bled the afternoon of October 1—wouldn't that indicate the area was still workable?

A. No Sir.

Q. Did you realize that in refusing to do a job as ordered by a supervisor, or Car Foreman, that you were being insubordinate?

A. Under the circumstances, no.

Q. Would you clarify that answer given in the last question?

A. Under the circumstances that I just quoted in the previous question, Mr. Larson issued a verbal statement prior to this date, October 1st, 1968, that we didn't have to work in tracks 007 and 008 until this unsafe condition was straightened out.

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Questions by Mr. Cox.

Q. Mr. Larson, approximately on Sunday September 1 or Sunday September 8, they pulled a cut in 007. Could you tell me what happened that day?

A. On that particular date you're referring to, they brought a cut in 007. I asked the General Yardmaster Ed Ross if he could take and pull that train in another track because of the unsafe conditions in 007. He said 'No'—that he would not tie up a 70 car track for 30 or 35 cars. At that time Mr. Cox was in the yards working and he informed Mr. Ed Ross that Mr. Larson said we would not have to

work 007 and Mr. Ross pulled that cut of cars out of that track and put it in another track so that we could work it."

From a review of the testimony received at the investigation, and more particularly from a review of the above excerpted testimony, we believe that Carrier's action in this case was arbitrary. General Car Foreman Larson had told the General Chairman and Vice Chairman that the tracks need not be worked because of admittedly unsafe conditions and with few exceptions, these tracks were not worked for a period of sixty days. The Car Foreman, who issued this order admitted that the area was unsafe. In view of all the circumstances and facts of record, we will sustain the claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1970.