

Award No. 6050

Docket No. 5909

2-C&O-FO-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the controlling agreement Laborer Larry C. Farrow was unjustly dismissed from the service of the Carrier on October 23, 1968, pending investigation, and discharge on November 19, 1968, following investigation.

2. That accordingly the Carrier be ordered to reinstate Laborer Larry C. Farrow to service with seniority, vacation and other employee rights unimpaired and compensated for all time lost, retroactive to and including, October 23, 1968 and each day thereafter until returned to service.

EMPLOYEES' STATEMENT OF FACTS: On September 30, 1966, the Chesapeake & Ohio Railway Company, hereinafter referred to as the carrier, employed Larry C. Farrow, hereinafter referred to as the claimant, as a laborer in its car department at 19th Street, Huntington, West Virginia.

On October 8, 1966, claimant was furloughed and performed relief work on various occasions until recalled to a permanent position on January 16, 1968, reporting on January 22, 1968. The claimant was again furloughed on October 1, 1966, and continued to work relief work under the rules of the agreement. On October 12, 1968, he accepted a ten-day vacation vacancy of laborer, which included firing stationary boiler.

Under date of October 28, 1968, Car Superintendent U. G. Clemons charged the claimant as set forth in letter of that date, and requested him to attend investigation on November 1, 1968.

Formal investigation was held on November 1, 1968, as scheduled.

The evidence in this case clearly shows:

1. Farrow was insubordinate on October 23, 1968.
2. He refused to carry out the instructions of the foreman by refusing to perform the work assigned.
3. He was afforded a fair and impartial hearing.
4. The discipline administered was fully justified by the evidence adduced at the hearing.

Carrier submits that on the basis of the record, the claim of the employees 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 employees 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.

On September 30, 1966, Claimant was employed by Carrier as a laborer in the Car Department at Huntington, West Virginia.

On the date in question Claimant was filling a temporary vacancy of laborer, which included firing stationary boiler.

By letter dated October 28, 1968, Claimant was ordered to attend investigation in the Car Superintendent's office on November 1, 1968. The letter charged Claimant with insubordination by refusing to perform duties assigned to him by Car Foreman J. A. Bess.

The record of the investigation clearly shows that the Claimant was guilty of insubordination.

In response to a question by Car Superintendent Clemons, Claimant stated:

"I came in Wednesday evening, October 23, 1968, and Mr. Bills told me that Mr. Bess wanted to talk to me, so I went on and Mr. Bess asked me what Mr. Blake and I did the night before. I asked him what he was talking about and he said about cleaning the fire box. So I told him that I had cleaned the ashes on the side and that Mr. Blake said that that was good enough. Then Mr. Bess got up and said for me to go out there and clean it again and I asked him why it was that it took a week before he could get it cleaned, in other words, didn't the one regular second trick man clean it, because I had last cleaned it myself. He said that it was up to me to clean it and that he was telling me to clean it, not them. So then he told me again to go out and clean the boiler, so I said I had to go

to the Rip Track and unlock switches. As of now, this was my regular routine; they never really told me the complete duties of each shift. So, when I walked out of the office, he asked me where I was going — to clean it? I just looked at him and he said I did not have to work and that he did not have to put up with me, and that was when he grabbed my time card and told Mr. Bills not to give it back to me and said so far as he was concerned that was it. So I left.”

It appears that the Claimant wanted to do the work in the order he desired, not in the order he was instructed to. The right to determine when work is to be performed is the prerogative of the Carrier. (Third Division NRAB Award 16191).

There is evidence in the record of a previous dispute between claimant and Car Foreman Bess. It also appears that Claimant believed an employee on another shift should have cleaned the fires. We believe that Claimant was obligated to follow instructions and, if he felt he was unjustly treated, to file a grievance under the existing procedure. (Second Division NRAB Award 4782).

We will not disturb the discipline imposed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1970.