

**Award No. 6188
Docket No. 6035
2-IC-EW-'71**

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement at Memphis, Tennessee, on Saturday, June 7, 1969, when it suspended Electrician A. H. Gonzales at 1:50 A.M., prior to investigation on Thursday, June 12, 1969, charging insubordination. Carrier further violated the current agreement on June 13, 1969, when it suspended Electrician Gonzales for thirty (30) calendar days beginning June 8, 1969, on the grounds that it had found him guilty of refusing to carry out instructions and being disrespectful to his supervisor.

2. That the Carrier compensate Electrician A. H. Gonzales for all time lost due to Carrier illegally holding him out of service prior to the investigation due to the improper suspension.

EMPLOYEES' STATEMENT OF FACTS: That A. H. Gonzales, hereinafter referred to as the Claimant, entered the service of the Illinois Central Railroad Company, hereinafter referred to as the carrier, in September, 1960, and at the time of the instant dispute was employed as an Electrician.

That on Friday night, June 6, 1969, Claimant started on the new job of truck repair at carrier's Memphis Diesel Shop, with hours of 11:00 P.M. to 7:00 A.M.

Claimant has worked for Carrier for eight and one-half (8½) years.

Claimant at no time refused to carry out instructions given him by Roundhouse Foreman. Claimant did not use abusive language with the supervisor.

That at 6:40 A.M. on June 7, 1969, Roundhouse Foreman instructed claimant to put cab card on locomotive 421. At approximately 6:40 A.M., on

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.

Claimant, by letter dated June 9, 1969, from Carrier's Assistant Master Mechanic, was advised, in part, as follows:

"Please arrange to attend a formal investigation to be held in the office of the Master Mechanic on Thursday, June 12, 1969, 8:00 A. M., for the purpose of determining whether or not you refused to carry out instructions given you by your supervisor Friday morning, June 6, 1969, when you failed to install monthly locomotive unit and repair report in the cab of Locomotive 421. Also, to determine whether or not you were disrespectful to your supervisor on Saturday morning, June 7, 1969.

* * * * *

Carrier found Claimant guilty of refusing to carry out instructions given him by his supervisor and also of being disrespectful to his supervisor, and was suspended from Carrier's service for a period of thirty (30) days. Carrier, as a matter of leniency, reduced the temporary suspension to eleven (11) days.

The Organization contends that Claimant was disciplined by Carrier without a fair hearing; that the hearing officer had prejudged Claimant; that the Carrier failed to meet its burden of proving its charges against Claimant.

The Organization is relying on an alleged violation of Rule 39, the pertinent part thereof providing:

"No employe shall be disciplined without a fair hearing by a designated officer of the carrier."

While it could be argued that the hearing officer, by virtue of the form of questions propounded by him to Claimant, was prejudging Claimant, nevertheless, Claimant as well as Local Chairman A. Manley and Committeemen J. E. Clark and E. V. Hulbert, all replied "Yes" to the question: "Has this investigation been held in a fair and impartial manner?" asked of them by C. T. Stringer, Assistant Master Mechanic. Thus, Claimant cannot now complain of the unfairness of the manner in which the hearing was conducted by Carrier.

It is undisputed that Claimant failed to follow the instructions of his supervisor by not putting the cab card in Locomotive 421. Claimant attempts to excuse said failure on the grounds that he forgot to comply with said

direction. However, we feel that this fact does not relieve Claimant of responsibility for failure to comply with said order of Carrier. Also, the fact that Claimant was informed by Machinist J. E. Brooks of alerter trouble on Engine No. 421 does not excuse the failure of Claimant to comply with a specific order given to him by an officer of Carrier.

Secondly, the record clearly shows that Claimant was disrespectful to his superior, H. W. Odom, Roundhouse Foreman, on the date in question.

As was said in this Division's Award No. 3676:

"It is well settled that where the record contains substantial evidence in support of Carrier's findings and there is no showing of arbitrary action, this Board will not weigh the conflicting evidence and substitute its judgment for that of the trier of facts. Award 1809. * * *"

Therefore, we find that Carrier did not abuse its discretion under all the circumstances when it caused Claimant to suffer an 11-day temporary suspension, and we must thus deny the claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November, 1971.