

Award No. 6309
Docket No. 6186
2-P&BR-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph E. Cole when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

PATAPSCO & BACK RIVERS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

(1) The Patapsco & Back Rivers Railroad, hereafter referred to as the Carrier, improperly and unjustly dismissed Carman Helper James A. Alban, hereafter referred to as the claimant, from its service March 8, 1971.

(2) The Carrier be ordered to reinstate the claimant to service with full seniority and service rights and paid for all time lost.

EMPLOYEES' STATEMENT OF FACTS: On March 3, 1970, the claimant was hired as a carman helper by the Carrier. Attached hereto and identified as Exhibit A is the January 1, 1971, seniority roster showing his relative position to other helpers.

Under date of March 3, 1971, the claimant bid on carman helper position on Job No. H 74, H 73 or H 70. General Foreman J. A. Stevenson signed receipt for his application.

Under date of March 8, 1971, the claimant was assigned by bulletin to helper position H73 working 7:00 A.M. to 3:00 P.M., rest days, Saturday and Sunday on #4 Motor Car.

On March 8, 1971, the claimant was directed to fill carman's position on A 15 truck. The claimant elected to remain as a helper on #4 Motor Car. The supervisor sent him home. Junior Helpers Isenok and Mathews remained on helper positions.

Under date of March 8, 1971, notice was given for Hearing to be held on March 11, 1971, with claimant charged with:

"Insubordination in that you refused to work as carman as directed by General Car Foreman J. Stevenson on Monday, March 8, 1971."

was subsequently discharged. In sustaining the dismissal, the Board held in pertinent part:

On the day following the incident hereinbefore referred to Master Mechanic H. L. Harrell directed General Car Foreman L. R. Barron not to let claimant drive the truck until after an investigation of the incident had been made but, in the meantime, to assign him to the rip track. Barron sought to do so but claimant refused to work there, claiming such assignment was contrary to his rights under the parties' effective agreement. Assuming such to be true, a question we need not here decide, the following principles have controlling application:

An employe must be obedient to the orders of his superior regardless of what rights he may have under the provisions of a collective bargaining agreement. His failure to do so will make him subject to discipline for insubordination. If, in obeying such orders, any rights which he may have by reason of the provisions of the agreement are violated he can and must be redressed through the channels which the agreement provides for his protection. There are exceptions to these principles but the facts here presented do not have application thereto.

In the instant case, Alban was given at least a week's notice that he might be required to work as a Carman on March 8, 1971. Neither Alban nor the Brotherhood took any steps under the agreement to protest this assignment. When Alban was given a direct order to work as a Carman on March 8, 1971, he deliberately refused to obey. Under the circumstances, the Carrier submits the instant claim is completely without merit and should therefore 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.

We fully realize that there has to be authority between carrier and employe.

I refer to earlier agreements that state that there are certain unalienable rights of all individuals.

I consider that one of these unalienable rights is that I do not have to work anywhere if I do not want to.

I do not know why the claimant would take the employment as carman, but I do not consider that this is an issue here.

A person on one classification does not have to accept advancement if, for some reason, he does not desire it.

AWARD

The carrier is ordered to reinstate claimant to service with full seniority and service rights and paid for all time lost, that the claimant did not receive reimbursement from another employer.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.