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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6339  
Docket No. 6162  
2-GM&O-CM-'72

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: ( System Federation No. 29, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Gulf, Mobile and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Carrier improperly suspended Carman H. C. Poiroux for ten (10) working days in the period February 3 to February 17, 1971.
2. That accordingly, Carrier be ordered to compensate Carman Poiroux for the ten (10) days loss of wages plus 6% interest annually, compounded annually.

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 Claimant in this case had two on the job injuries in less than a year's time. In May 1970 the Claimant filed an accident report for a foot injury which was investigated by Mr. Carroll, the Carrier's Claim Agent. During this investigation the Claimant made an additional statement to the Claims Agent and was compensated for the foot injury. In reference to this settlement and Mr. Carroll's attitude the Claimant testified at the hearing on the property:

". . . About a week later he (Mr. Carroll, Claim Agent) came back and asked me for a refund on part of the settlement. I refused and at which time he told me that if I did not make a refund that the company would have their day. (Carrier's Exhibit No. 1 page 6.)"

Neither the carrier nor their claim agent controverted this testimony. Such a statement would certainly alert the Claimant to be cautious in any future dealings with the Carrier's Claim Agent.

Later, on January 6, 1971, the Claimant sustained another injury when a maul slipped out of his hand and hit his mouth and teeth. Immediately thereafter the Claimant went to a dentist for treatment and filed an accident report. In reference to filing the accident report the Claimant testified:

"When I got through with the statement (Accident Report), I asked them if there was any more information that they needed; and they said, 'No.' I asked them if the statement needed to be signed by me, and they said, 'No.' So I felt like I had done all I could do. (Carrier's Exhibit No. 1 page 6.)"

Clearly, when the Claimant was filing his accident report in the Master Mechanic's Office he was willing to provide any requested information. Later on two different occasions the Carrier's Claim Agent asked the Claimant to give him a statement about how the accident occurred. The Claimant refused to make any statement on the grounds that he had nothing to add to the accident report. In the Master Mechanic's Office the claimant by his own testimony was willing to provide additional information, but by his own testimony was unwilling to provide additional information to the Carrier's Claim Agent. Due to his earlier accident experience the Claimant may have been motivated to avoid the Carrier's Claim Agent. This conduct raises the question of whether an employee is entitled to make a blanket refusal to provide accident information after he has filed his initial accident report.

Insubordination is a very serious charge in railroad labor relations. The refusal of an employee to follow the instructions of a carrier official ordinarily is not justified unless the employee's health and safety will be jeopardized. If accident cases are to be settled on the property and the expenses of litigation to employees and Carriers alike are to be avoided the cooperation of employees and carrier officials is necessary. If the Claimant in this case was apprehensive about dealing with the Carrier's Claim Agent then his recourse was to seek the assistance of an Organization representative or legal counsel. He may not refuse to answer any questions. Under the Federal Employers Liability Act and civil discovery procedures the Carrier is entitled to evidence involved in the accident case.

In the light of these findings it appears to this Board that the 10-day suspension was not unreasonable, arbitrary or capricious.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

E. A. Wilson  
Executive Secretary

ated at Chicago, Illinois this 7th day of July, 1972.