

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
(Carmen
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(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. That the Norfolk and Western Railway Company violated the Current Agreement when they unjustly dismissed temporary Carman J. Harris from its service on November 8, 1972, as result of formal investigation held on October 24, 1972.
2. That accordingly, the Norfolk and Western Railway Company be ordered to restore temporary Carman J. Harris to service with seniority rights unimpaired and compensated at his applicable rate for all time lost, including vacation, health and welfare benefits, and Railroad Retirement benefits.

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.

On October 10, 1972, the claimant was employed as a temporary Carman at Carrier's Brooklyn, Illinois Shop. On that date claimant was assigned to cleaning up track #13. Carrier maintains that claimant failed to perform this assigned duty and when approached by General Car Foreman S. G. Roe, claimant refused to do this work. They further contend that claimant threw a broom across the locker room and told General Car Foreman Roe that he was not going to take instructions from him or anyone else. As a result of the foregoing, claimant was charged with insubordination toward Mr. Roe and following a Hearing held on October 24, 1972 he was dismissed from service with the Carrier.

It is the position of the Employees that claimant was not afforded a fair and impartial Hearing as required by Rule 33 of the applicable Agreement. Careful consideration of the evidence adduced at the Hearing, however, compels us to conclude that claimant was afforded a fair and impartial Hearing. Claimant conceded that most of the testimony given by General Car Foreman Roe was true including the statement that he would not take orders from Mr. Roe who admittedly was his supervisor. He also admits that he threw a broom across the locker room and walked out immediately following his argument with Mr. Roe.

It is the considered opinion of this Board that the aforementioned evidence clearly demonstrates that the claimant was guilty of insubordination toward his supervisor, General Car Foreman Roe. Yet in spite of the gravity of the proven offense, we nonetheless must find that claimant's dismissal was excessive. At the time of the incident, claimant had five and one-half (5½) years of service with the Carrier and a clear discipline record. In the light of this clear record, we are led to conclude that claimant should be restored to service with the Carrier with his seniority rights unimpaired but without any compensation for the time held out of service.

A W A R D

Claim sustained to the extent indicated, supra, in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of April, 1976.