

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

Parties to Dispute: ( System Federation No. 1 (formerly System Federation  
( No. 30) Railway Employees' Department AFL-CIO  
( (Electrical Workers)  
(  
( Staten Island Rapid Transit Operating Authority

Dispute: Claim of Employees:

1. That Electrical Worker (leading Substation Maintainer) Thomas J. Curley was improperly suspended from service from August 24, 1973 to and including August 31, 1973, following an investigation held August 28, 1973.
2. That the discipline imposed was improper and excessive in light of the alleged offense. That accordingly the Carrier must restore all lost pay and other benefits due him for the full time of the suspension.

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 the evening of August 23, 1973 Carrier experienced an electrical malfunction and loss of traction power on its electric railway between the substations at Atlantic and Old Town. Trains were stopped and passengers stranded. Claimant was employed as a Leading Substation Maintainer whose responsibilities included troubleshooting in such emergencies. Claimant was contacted at his home and called out to repair the malfunction. He refused the call unless Carrier would provide him with transportation. The record shows that Claimant had for several years driven his automobile on road calls for which he was reimbursed ten cents a mile. But shortly before this incident Claimant had attempted unsuccessfully to get a higher mileage allowance. When called for the emergency on August 23, 1973 he told his supervisor in words or substance that he had sold his own car and his wife's car could not be used by him for business. He was directed to use public transportation i.e. Carriers

trains from Eltingville, which section still had traction power. The undisputed record states that this station is some 2000 feet from Claimant's residence. He again refused to report unless Carrier provided automobile transportation, citing fear for his personal safety if he walked through his neighborhood at 9:00 P.M. on a summer evening. Claimant did not report for duty and the repairs were affected by other employees and supervisory personnel.

On August 24, 1973 Claimant was notified of a hearing and investigation on charges of insubordination in the face of an emergency. Subsequently he was found guilty and, following conference with the Organization, a penalty of one work-week suspension was imposed. Thereafter, on October 26, 1973 the instant claim seeking restoration of back pay was filed.

We have reviewed the record and are convinced that Claimant had a fair and impartial investigation. Contrary to the Organization's assertions he was afforded the right to call witnesses and absent contractual mandates we cannot find Carrier under an obligation to pay Claimant's witnesses.

In this connection, however, the Organization has properly objected to certain new evidence raised de novo before our Board relative to another unrelated case and that material has been excluded from our consideration.

The record clearly supports a finding of insubordination or refusal to comply with a reasonable order from supervision. Claimant twice refused to report for duty in a bona fide emergency situation. So far as this record shows there was no reasonable basis or prima facie evidence supporting his purported fear for his personal health and safety. Rather the record strongly supports the inference that his refusal was part of a calculated effort to achieve higher mileage reimbursement. Under the circumstances the discipline imposed was hardly unreasonable. This claim is without merit and is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 25th day of June, 1976.