

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

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I.O.
((Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Freight Car Repairman Richard D. Mangun was unjustly dismissed from service January 15, 1976.
2. Freight Car Repairman Richard D. Mangun was erroneously charged with failing to promptly unlock switches as instructed, resulting in a 30 minute delay to the switch engine and delay to the Second shift Spot Rip on Thursday, November 20, 1975.
3. That the Chicago and North Western Transportation Company be ordered to reinstate Mr. Mangun with seniority unimpaired and compensate him for all time lost at eight hours per day, plus any other benefits he would be entitled to under Rule 35.

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.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

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The record before us shows that Claimant was instructed to open switches at 2:40 PM by Carrier's Assistant Car Foreman. Claimant, however, delayed opening these switches until 2:50 PM or 2:55 PM, because Claimant went first to Carrier's "Barn Boss" to complain that Carrier's Assistant Car Foreman was picking on him, by always wanting him to throw the switches. Claimant alleges that the throwing of switches is a "penalty job."

We find that this is not a case of blatant insubordination, because Claimant opened the switches, although he delayed doing so for approximately 10 minutes. Claimant should have opened the switches when told to do so, and then have filed a grievance, if he believed the Assistant Car Foreman was violating the Agreement.

One of the most firmly established principles in labor relations is that an employee must obey supervision even when he disagrees with an order. Generally speaking, an order may be challenged only through the grievance procedure, which was set up to eliminate unseemly disputes at the time an order is given. The general principle often is stated as: "Obey now. Grieve later."

The reason for this principle is that a railroad yard is not a debating society. Its object is the movement of trains. When a controversy arises, the movement of trains cannot wait.

Furthermore, it would be destructive of proper employer-employee relations, if the employee was the final judge of what instructions he should follow or honor.

Under the circumstances of the instant case, however, we think discharge was unreasonable, and Claimant should be reinstated, but with no back pay. Claimant is warned, though, that future recurrence of such behavior may well result in immediate dismissal.

A W A R D

Claim upheld as per above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 9th day of December, 1977.

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