

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 22, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company unjustly suspended Carman Harold F. Addison, Springfield, Missouri, from service on January 14, 1977, and subsequently dismissed him following an investigation conducted on January 18, 1977, in violation of the controlling Agreement and in total disregard of, and derogation of, the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employees.
2. That the St. Louis-San Francisco Railway Company failed to provide reasonable notice of the investigation and reasonable opportunity to prepare and defend the charges, thereby depriving Carman Harold F. Addison of a fair hearing in violation of the controlling Agreement.
3. That Carman Harold F. Addison be restored to service with all seniority rights, vacation rights and benefits that are a condition of employment; that he be compensated for all lost time plus 6% annual interest; that he be reimbursed for all losses sustained because of loss of coverage under health and welfare and life insurance agreements during the time he has been held out of service.

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.

Claimant was dismissed because he had allegedly refused to obey a direct order of his supervisor. Claimant had been assigned the job of building trucks. On the day in question, January 14, he was instructed to obtain some truck parts outside the shop and carry them back into the shop. Claimant refused, stating that he had a cold.

The day was marked by inclement weather--cold, snow, and slush. The parts Claimant was directed to obtain were located about 10 feet from the shop door. The employees' parking lot, where Claimant parked his car, is located some 150-200 yards from the shop.

It was not until the formal investigation on the charges levied against Claimant that Petitioner alleged that Claimant's refusal was based on considerations of personal safety.

Claimant refused the instructions of both his immediate supervisor and the General Foreman to obtain the truck parts needed for the truck assembly. It is well understood that employees are to comply with reasonable orders of their supervisors unless compliance with such orders or directions would expose them to clear and immediate danger. The "law of the shop" is to obey first and then grieve if an employee believes that the order is unjust or not according to the terms of the collective bargaining agreement. Claimant should have followed this procedure.

At the time of the incident, Claimant did not raise the hazard or danger factor as his reason for refusing to obtain the parts stored outside the shop building. His reasons for failure to comply with his foreman's request, according to the record, were that he was coming down with a cold and the inclement weather. At the time of the occurrence, Claimant was 61 years of age with 26-1/2 years of service with the Carrier.

During the later stages of the appeal process, Carrier offered to return Claimant to service on a leniency basis without pay for time lost but with all seniority and vacation rights unimpaired. This offer was rejected by the Organization.

This Board is of the opinion that Claimant's action in refusing to follow his foreman's instruction merited discipline, but not the sanction of dismissal from Carrier's service. It may well be that Carrier, taking all factors into account, recognized that Claimant's offense did not warrant dismissal from service and offered to return him on a leniency basis but without pay for time lost. We are inclined to agree with Carrier and, accordingly, rule that Claimant shall be restored to service without pay for time lost.

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Award No. 7767
Docket No. 7691
2-SLSF-CM-'78

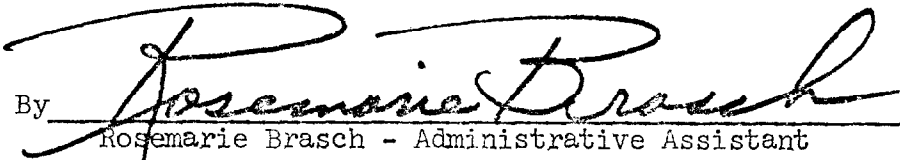
A W A R D

Claimant is to be restored to service without pay for time lost.

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 6th day of December, 1978.