

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

Parties to Dispute: (System Federation No. 162, Railway Employees'
Department, A. F. of L. - C. I. O.
(Boilermakers)
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That the Southern Pacific Transportation Company has violated the current controlling agreement particularly rule 34, at Houston, Texas, by unjustly dismissing from service of the Carrier, Boilermaker W. R. Benson on April 28, 1977.
2. That accordingly, the Southern Pacific Transportation Company be ordered to restore Boilermaker W. R. Benson to service with all seniority and service rights, vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired and compensated for all lost time plus 6% annual interest on all such lost wages, also reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements, all this to be effective April 28, 1977.

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 a Boilermaker Welder at the Carrier's Running Maintenance Plant at Houston, Texas. On April 28, 1977, he was working the evening shift. Work was proceeding on equipment situated on a certain track in that facility, such work proceeding under "Blue Signals" -- in this case, a "Blue Flag". Such signal, when erected, protects persons working on or under such equipment from its movement and, as such, is a safety provision. Use of "Blue Signals" is set forth in Rule 126 of the Agreement between the parties:

"Trains or cars while being inspected or worked on by train yard men will be protected, by blue flag by day and blue light by night, which will not be removed except by men who place same."

Once a "Blue Flag" is erected, any and all other persons who will be performing work on the equipment involved, attach a "Red Tag" to the Flag. If such equipment is to be moved thereafter (so as to clear the track, for example) those persons affixing the "Red Tags" are required to remove them before the "Blue Flag" can be removed, thus withdrawing the protected status of the equipment against movement.

On this evening, the Claimant had affixed a "Red Tag" to an aforementioned "Blue Flag", which had previously been erected. An announcement over the public address directed removal of all "Red Tags" on the "Blue Flag", so as to permit movement of the equipment in question. The Claimant complied with the request and removed his "Red Tag". As he was proceeding to his next work site, a roundhouse foreman (not the Claimant's supervisor) ordered him to also remove the "Blue Flag"; the Claimant did not respond nor indicate he had heard the foreman. The foreman recontacted his order several times, following the Claimant in the process. He thereafter ordered the Claimant to his office; the Claimant consulted with another supervisor and eventually appeared for the meeting. At no time was the Claimant responsive to the foreman's orders or queries.

The Claimant was removed as of that date; after several attempts to persuade the Claimant to return without pay, he did so on December 5, 1977, so as to protect his job.

A hearing was convened on May 11, 1977. The record indicates the Claimant was advised of the hearing through the Organization. The Organization contends a variety of procedural defects in the handling of the case: no investigation, no precise charge (the Claimant was charged with "refusal to follow instructions"), absence of the right to representation by person of his own choosing, lack of a fair trial and prejudgmental bias on behalf of the hearing officer. As to the merits, the Organization contends that the charging foreman had no right to direct the work of the Claimant, did not specifically refer to him by name when he issued the order to remove the "Blue Flag" and, in so issuing that order, was requiring the Claimant to violate a Rule (126).

Insofar as the Carrier is concerned, it asserts that: every employee is obliged to accept work direction from any member of supervision so long as such directives are reasonable; the Claimant knew full well the foreman was addressing him, even though he did not do so by name (according to the foreman, he did not use the Claimant's name because he was "in a hurry"); and, it is established past practice that the employee who removes the last "Red Tag" also withdraws the "Blue Flag".

We need not address the various claims as to procedural matters in the case -- it is enough to assess the status of the Rule (126) as it is written and the Carrier's claim of past practice, relative to removal of the "Blue Flag". Rule 126 is clear and unambiguous in its intent -- it prohibits removal of a blue flag or flag light except "... by men who place same." This is held against the Carrier's claim of past practice for the individual who removes the lost "Red Flag" to also remove the "Blue Flag" (or blue light). The carrier's position lacks support: suppose the Blue Flag is erected in order to protect a mechanical problem inherent in a locomotive. Since the locomotive is protected against removal, especially such opportunity is taken by other crews to perform work on the locomotive, though perhaps not so critical or hazardous; to do so, such must indicate additional work is underway by affixing a "red flag". If any craftsman performing such auxiliary work can remove the "Blue Flag" when removing the lost "red flag", how can the safety of the employee covered by the Blue Flag or the integrity of the equipment involved be protected? The literal reading of Rule 126 provides for protection against such an eventuality. Thus, the maintenance foreman appears to have been violating, of the Claimant, performance of an act which was in direct violation of a stated Rule.

What, then, is to be made of the Claimant's lack of response to the foreman? The record indicates a personal disdain by the Claimant for the foreman. We are satisfied that his non-responsiveness was not due to a lack of hearing the order or the lack of personal preference by mere whim the foreman called to him. For this we cannot hold the Claimant blameless. Considering the nature of the order and the other factors involved herein, we conclude that a 15 day suspension would have been warranted over the Claimant's refusal to be responsive and for walking away from a supervisor when being addressed; otherwise, the Claimant is to be made whole for lost wages and his other benefits and seniority are to be intact for the time he was held out of service.

A W A R D

Claim is sustained to the extent set out in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By  
Rosemarie Deacon - Administrative Assistant

Dated at Chicago, Illinois, this 10th day of January, 1979.