

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

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

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Controlling Agreement, of June 1, 1939 as subsequently amended, when on September 1, 1976 Carman J. A. Davidson was given a formal investigation resulting in unreasonable and capricious assessment of dismissal effective October 5, 1976.
2. That the investigation was improperly arrived at and represents unjust treatment within the meaning and intent of Rule 33 of the Controlling Agreement.
3. That because of such violation and capricious action, Carrier be ordered to
  - (a) reinstate J. A. Davidson to service with seniority rights, vacation rights, and all other benefits that are a Condition of employment unimpaired, with Compensation for all lost time plus 6% annual interest.
  - (b) that J. A. Davidson be reimbursed for all losses sustained, account loss of coverage under Health and Welfare and Life Insurance Agreements during the time 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 for insubordination for refusing to obey a Foreman's orders. The circumstances leading to the charge are as follows:

Shortly after noon on the day in question, Claimant was requested by his Foreman, by radio, to pick up an oil can and oil a car. Claimant, by radio, told his Foreman that since Carrier had a truck for this job, he was not going to do it. The Foreman told Claimant that the truck was tied up. Claimant, nevertheless, repeated that he was not going to do the job. Shortly thereafter, Claimant called the Foreman on the radio, stated he had a headache, and asked the Foreman to check him out at 1:00 p.m., because he was going home.

A witness testified that he heard the radio conversation between Claimant and Foreman; that Claimant said he did not know where the oil can was located; and that Claimant stated he was not going to oil the car.

Another witness also testified that Claimant stated he was not going to carry the oil as long as the truck was available and that the Foreman told Claimant that the truck was tied up.

At the investigation, Claimant testified as follows: "well he (foreman) told me to go down to the middle and get a can and oil this car. I told him I didn't think I wanted to do that ...". Claimant added the reason he did not want to carry the oil can was that about one month previous he had sustained a back injury at work; that he was still under doctor's orders; that the doctor had recommended light duty work; and that carrying an oil can with 2½ gallons of oil for a distance in excess of a quarter mile was not light duty.

Claimant's explanation, summarized supra, should have been conveyed to his Foreman at the time he was directed to pick up the oil can and oil the car. Claimant may well have feared aggravating his back injury by carrying the oil -- but it was up to him to let the Foreman know of the reason for his action.

At the time of the incident, Claimant had 23 years' service with Carrier.

Under all the circumstances, we direct that Claimant be restored to service, with all rights restored, but without pay for time lost.

Claimant is hereby warned that it is his duty (as it is of all employees) to obey orders, unless such orders are clearly unreasonable or constitute a direct threat to his safety or health, or are unlawful. If he has any question about the propriety or reasonableness of orders given him by supervision, he is to take up that question later through the orderly process of the grievance procedure provided in the Agreement. The simple and general rule which he is hereby instructed to follow is: Follow orders and grieve later. Failure to comply with this rule will render him subject to dismissal.

A W A R D

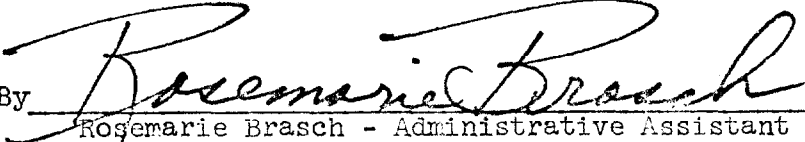
Claim sustained in accordance with Findings.

Form 1  
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Award No. 8109  
Docket No. 7950  
2-N&W-CM-'79

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 27th day of September, 1979.