

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(Elgin, Joliet & Eastern Railway Company

Dispute: Claim of Employes:

1. That Laborer Paul Denny was unjustly dismissed from service on October 2, 1977.
2. That accordingly the Elgin, Joliet and Eastern Railway Company be ordered to return Laborer Paul Denny to work immediately, compensate him for all time lost, restore full seniority and all benefits.

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.

An investigative hearing was held on November 2, 1977 to determine whether Claimant was insubordinate to the Roundhouse Foreman on October 2, 1977 when he refused work as instructed, concerning new Federal Railway Administration Service Pit Lockout Regulations.

Claimant was found guilty of the charged specification and his original dismissal from service on October 2, 1977 was sustained on November 7, 1977. This disposition was appealed on the property and is presently before this Board for appellate consideration.

In reviewing this case, particularly the precise pattern of events leading up to the foreman's disciplinary action on October 2, 1977, we find that Claimant was manifestly insubordinate when he refused to service locomotive 700 because he concluded that his duties did not include compliance with the Federal Railroad Administration regulations and the servicing of locomotives. Claimant was under an unequivocal employment obligation to execute diligently this supervisory instruction and was plainly insubordinate when he refused this directive. The record does not show that he was confronted with a palpably unsafe workplace situation or that he was unqualified to perform these duties. He should have implemented the instructions and grieved later pursuant to applicable Agreement Rules rather

than seek self help if he felt that the work requested was outside his job description. By refusing to obey his superior, in the absence of a compelling mitigative rationale, he placed himself in an untenable position.

We believe, based upon the evidentiary record and Claimant's prior disciplinary history, that Carrier's dismissal determination, was not capricious or an abuse of managerial discretion. Claimant was provided with a fair and an impartial hearing and the conclusion reached was commensurate with the gravity of the infraction. This Board has consistently held as a matter of judicial policy that insubordination in whatever guise or form is just unacceptable in the railroad industry. While we are constrained by the force and clarity of the evidence to affirm Carrier's terminative decision, we believe that his dismissal to date was sufficient penalty for the offense. Accordingly, predicated upon this finding, we will order his reinstatement to his former position with the added proviso that we will look unkindly upon any future recidivist behavior. This disposition comports with the tenets of progressive discipline and the Board's recognition of the need for constructive rehabilitation.

A W A R D

Claim sustained to the degree expressed herein.

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 January 16th, 1980.