

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{
{ Consolidated Rail Corporation

Dispute: Claim of Employee:

1. That under the Current Agreement, Electrician Louis M. Legler, communication lineman, was unjustly dismissed from the service of the Carrier on November 23, 1977.
2. That, accordingly, the Carrier be ordered to restore him to service with all seniority rights unimpaired, vacation rights, 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 of 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.

On November 22, 1977, Mr. Legler was working as a first trick lineman on Line Gang 6, reporting at Dunkirk, New York. Line Gang 6 departed Dunkirk shortly after 7:00 A.M. and reached the job site at about 8:30 A.M. Claimant gathered his equipment and climbed a pole to hang crossing arms. Upon reaching the top of the pole, Claimant laid his brace and bit across the wires, creating a short circuit that caused the signal facing Train NY-2 to improperly change from green to red. The train was delayed. Signal Department personnel, in radio transmissions, speculated that the trouble might have been caused by Line Gang 6. Claimant's foreman instructed a co-worker to tell Claimant to remove his auger from atop the lines. Claimant responded with an obscene imprecation for the Signal Department and ignored the order. Only after he had completed his task atop the pole did Claimant remove the brace and bit from the wires.

After formal investigation, and under date of December 27, 1977, Claimant was dismissed for the following:

- (1) Insubordination: "Failure to obey order to remove brace and bit from Signal Control line. When told to do so, employee did rub the brace and bit with a back and forward motion against the Signal Control lines, completed his work and did not remove the brace and bit from the Signal Control lines until descending the pole". Whereas you caused the change in a signal aspect on Signal 21-2E to be changed from a green aspect to a red aspect in the face of NY-2 at approximately 9:00 AM on November 22, 1977.
- (2) Violation of Rules for Conducting Transportation, General Notice, Para. 2, "Obedience to the rules is essential to Safety" and Para. 4, "The welfare of the Company depends upon the confidence of its patrons in the integrity and trustworthiness of all employees and their ability to properly perform their assigned tasks safely and efficiently. The service demands the faithful, intelligent and courteous discharge of Duty."
- (3) Violation of Rules for Conducting Transportation, Rule E, Paragraph 2, (in part), "To remain in the service, employees must refrain from conduct which adversely affects the performance of their duties, other employees, or the public", and Paragraph 7, "Any act of hostility or willful disregard of the Company's interest will not be condoned."

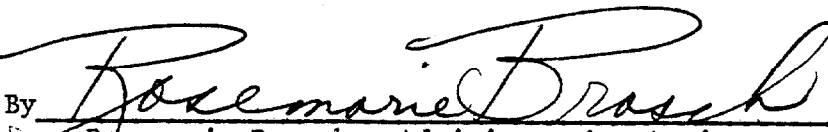
We find that the investigation was fairly and properly conducted and that Claimant violated the cited rules. However, we find that under all the circumstances, permanent separation from the service is unjustified. Claimant shall accordingly be restored to duty without loss of seniority but without compensation for time lost.

A W A R D

Claim sustained in accordance with the findings.

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 5th day of November, 1980.