

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute:

{ Brotherhood Railway Carmen of the United States  
and Canada

{ Elgin, Joliet & Eastern Railway Co.

Dispute: Claim of Employees:

1. That as a result of an investigation held on Friday, October 13, 1978, Carman Painter, John Jenkins, Jr., was dismissed from the service of the Elgin, Joliet & Eastern Railway Company, October 20, 1978. The dismissal of Carman Painter Jenkins is arbitrary, capricious, unfair, unjust, unreasonable, and in violation of Rule 100 of the current working agreement.
2. That the Elgin, Joliet and Eastern Railway Company, hereinafter referred to as Carrier, be ordered to reinstate Carman Painter, John Jenkins, Jr., hereinafter referred to as Claimant, to the service of the Carrier with vacation, seniority, and all rights and benefits unimpaired plus compensation for all time lost commencing October 21, 1978 and continuing until such reinstatement is in effect.

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 subject to an investigation hearing for "allegedly failing to follow instructions issued by General Car Foreman D. R. Knapp at approximately 8:30 a.m., Tuesday, October 10, 1978, when you were directed to paint a metal box located in the Repair Track Wood Shop". As a result of the hearing, the Claimant was dismissed from service for violation of Rule F and Rule O, Paragraph 2 of the Safety Rules and General Regulations.

These rules read as follows:

"F. Every employe must be prompt and firm in the execution of his duty, but, at the same time, he must be civil and courteous.

"Civil, courteous and socially acceptable conduct is required of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane, vulgar, or abusive language is forbidden. Employees must not enter into altercation with any person, no matter what provocation may be given, but will make note of the facts and report to their immediate superiors.

Employees who are insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who are careless of the safety of themselves or others or who do not have or fail to exercise good judgment will not be retained in the service."

\* \* \*

O. 2. Employees must report to and receive instructions from the properly designated supervisor in their area and must comply with the instructions issued by the supervising official on duty."

The Organization argues that the investigation and resulting action were improper because "the Claimant was dismissed for a completely different reason than than contained in the so called letter of charge". The Board does not agree. The charge was entirely clear as to the incident in question. If found guilty, the Claimant would properly be subject to rules dealing with insubordination (Rule F) and compliance with instructions (Rule O). The Board finds that the hearing was conducted in a fair manner, giving the Claimant and the Organization opportunity for a full defense.

From the record, there is no question that the Claimant repeatedly failed to carry out instructions to paint a box and that such instruction was properly given. In his testimony at the hearing, the Claimant offered various reasons for his repeated failure to obey orders, none of which seemed plausible. One of the excuses was that the box was too hot to paint, but this is not borne out by the evidence.

What may have motivated the Claimant to refuse to obey an order, and thus be directly insubordinate, cannot be readily determined. He should have known that he was obligated to follow an order and, if necessary, to dispute the propriety of the order in a claim after he had complied. Compliance with proper instruction goes to the heart of the employee-employer relationship. The Carrier cannot be faulted for not tolerating such action, particularly in the absence of any mitigating circumstances.

The Claimant was properly found guilty of the charge. As to the severity of the penalty, the Claimant's disciplinary record -- while not including previous instances of insubordination -- does contain warnings and suspensions for unsatisfactory employee conduct. Under these circumstances, the Board finds no basis to interfere with the Carrier's action in dismissing the Claimant from service.

Form 1  
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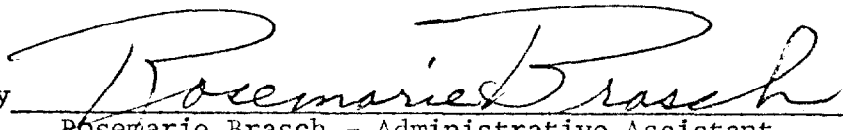
Award No. 8580  
Docket No. 8553  
2-EJ&E-CM-'81

A W A R D

Claim denied.

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 14th day of January, 1981.