

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

Parties to Dispute: { Brotherhood Railway Carmen of the United States  
and Canada  
{ Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the controlling Agreement, Carrier improperly administered thirty (30) days actual suspension against Carman N. H. Roberts, after investigation held on August 13, 1977.
2. That accordingly, Carrier be ordered to reimburse N. H. Roberts for all lost wages from December 7, 1977 to January 10, 1978 and that he be made whole and, that his record be cleared entirely. It is also requested that all overtime, vacations, seniority or, any other fringe benefit he was deprived of, be allowed as though the incident had never taken place.

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, Carman Nelson H. Roberts, assigned as a Tender Frame Repairman in the Roundhouse at Carrier's Stock Yards Shop in Ohio, was taken out of service December 6, 1977 for refusing to comply with proper instructions issued by his immediate supervisor. Carrier, by letter dated December 7, 1977, charged Claimant with insubordination and summoned him to attend an investigation scheduled for December 13, 1977. Based on the facts adduced at the investigation, Claimant was adjudged guilty as charged and was issued discipline of thirty (30) days actual suspension.

Claimant was in the process of completing painting Engine 3690 which had been under repairs for the previous two (2) weeks as a result of having been involved in a grade crossing accident, when, at approximately 1:45 PM on December 6, 1977, Supervisor, H. Reilman, Engine House Foreman, advised him Unit 3690 was going to be moved from #3 Pit to #11 Pit for pre-lube so as to ready it for service on Train 88. Claimant responded by telling Supervisor Reilman he would be finished painting the engine in approximately twenty (20) minutes as all he had left to do was to paint the handrails on the right side and the drop platform on the front of the Unit. In turn, Supervisor Reilman told the Claimant he was acting on orders from E. M.

Scherch, the General Locomotive Foreman and that Scherch wanted Engine 3690 to be moved to #11 Pit immediately. Accordingly, Supervisor Reilman instructed Claimant to finish painting the engine at #11 Pit to which Claimant responded he would not finish painting the Unit at the new location. Supervisor Reilman then told Claimant he had fifteen (15) minutes to get his paint and brush and to begin working, but at the end of this allotted time, Claimant, for the second time refused to perform the work. Supervisor Reilman immediately reported Claimant's conduct to Foreman Scherch who in turn located and confronted Claimant about the situation. According to testimony elicited at the investigation, Claimant admitted to Foreman Scherch he had refused to finish painting the engine, offering as a reason that it would have only taken him approximately twenty (20) to thirty (30) minutes longer to complete his work had the Unit remained at #3 Pit. Foreman Scherch then asked Claimant if he would finish painting the engine now to which Claimant responded he would be unable to paint the upper handrail because of its being obstructed by the platform rail. Foreman Scherch then inquired of Claimant if he would be willing to paint the other remaining part of the Unit forgetting about the upper handrail. At first, Claimant answered in the affirmative, but then apparently had a change of heart stating, "I'm not going to paint it for you or anyone else". In view of Claimant's third refusal to perform the work in question, Scherch informed him he would be removed from service and accordingly instructed Supervisor Reilman to so do.

The Organization alleges that on the date in question, there were factors present at #11 Pit which constituted unsafe working conditions. In support of its position, the Organization cites the testimony given at the investigation by Carl Lemker, employed by Carrier as a Pipefitter, who also is Chairman of the Roundhouse Safety Committee; Lemker testified that about 2:00 PM on the afternoon in question, at Claimant's request, he inspected #11 Pit and found the rails were wet with water from washing snow and ice from a previous locomotive. Lemker further testified, that in his estimation the wetness of the rails constituted unsafe conditions for someone who would have to step on them to paint the walkway platform of an engine. The Organization contends the actions of Claimant were not of an insubordinate nature as his refusal to complete painting was based on his primary interest of protecting life and limb. The Organization suggests, the evidence adduced at the investigation shows, that supervision placed Claimant in an impossible position by issuing instructions regarding the performance of his work in total disregard of his contractual guarantees of work safety and the Carrier's own safety policies.

Upon a review of all the evidence of record, it is the judgment of the Board that Claimant was afforded a fair and impartial investigation and too, that Claimant's rights of due process were well protected and not at any time impaired. The Board concedes the possibility that unsafe conditions may have been prevalent in #11 Pit at the time of the incident, as the Organization has so contended, but the Board also notes Claimant refused at least two times to perform his duties not on the basis of unsafe working conditions but rather on the basis of inconvenience. It was only after Claimant's second refusal to paint Engine 3690 at #11 Pit that he summoned fellow employee Lemker to inspect #11 Pit and allegedly asserted the ground of unsafe conditions as the basis for his third and final refusal, directed at Foreman Scherch, to complete his duties. Claimant's conduct was indeed improper and in view of all the surrounding circumstances was, in fact, of an insubordinate nature. Had Claimant not had longstanding service with the Carrier of thirty-one (31) years, we feel such deportment might have warranted a much harsher quantum of discipline.

Form 1  
Page 3

Award No. 8669  
Docket No. 8261  
2-B&O-CM-'81

As it is, we believe the suspension of thirty (30) days imposed upon the Claimant was fair and that the actions of Carrier were neither arbitrary, capricious nor discriminatory. For all the foregoing reasons we find we must deny the instant claim.

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of March, 1981.