

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: { International Association of Machinists and  
                          { Aerospace Workers  
                          { Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That Machinist Wineck B. Wooley was improperly removed from service on October 24, 1978, and, subsequently, unjustly dismissed from service on November 15, 1978.
2. That Machinist Wineck B. Wooley be returned to the service of the Carrier with seniority unimpaired and be made whole for all wages lost, and for any and all benefit losses incurred in accordance with Controlling Agreement J-1-(e) and existing law, if any, commencing with the removal from service October 24, 1978, and continuing until settled.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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, a machinist, was suspended from service on October 24, 1978, and was subsequently dismissed from service after a hearing. Claimant was charged with two offenses, insubordination and use of abusive language, which arose out of a single event.

At the commencement of claimant's shift on October 24, 1978, the General Foreman instructed the claimant to work as a machinist in the passenger engine overhaul program. Claimant refused to obey the instructions. During a meeting in the superintendent's office, claimant repeatedly reiterated that he would perform no work on passenger engines. The claimant normally maintains locomotives pursuant to a previous bid and award. The carrier did not give the claimant a reason for the change in work assignments. When told he could not refuse to comply with the General Foreman's direct order, claimant told four or five carrier supervisors, "You are all a bunch of f----" and "F--- all of you". Claimant then requested that he be taken out of service. The request was granted.

Initially, the organization raises a question concerning the fairness of the hearing. One of the primary carrier witnesses (the superintendent) issued the letter of discipline. After perusing the record, we cannot see how this minor procedural irregularity prejudiced the claimant. Furthermore, the superintendent's testimony was precisely corroborated by four other witnesses. Thus, we overrule the organization's objection.

In defense, the employees raise two arguments. First, the order given to claimant was contrary to his usual assignment and so he could properly refuse to follow the directive. Second, assuming he is guilty of insubordination, his language was nothing more than shop talk and therefore the discipline imposed was arbitrary. The carrier contends that there is substantial evidence demonstrating that claimant committed both offenses and because the claimant had served a suspension for a prior insubordination charge, dismissal is the appropriate penalty.

Claimant's admissions and the testimony of five reliable witnesses confirm that the claimant failed to follow a direct order given by his supervisor. To avoid anarchy in the shop, the principle of "work now; grieve later" is applied where the employee disagrees with a supervisor's instruction. Second Division Award No. 8223 (Roukis); Second Division Award No. 7767 (Weiss). If employees could engage in self help whenever they subjectively determined that an order was unreasonable, the stability of both continued production and peaceful labor relationships would be shattered. In this case, if claimant sincerely believed the General Foreman's order was contrary to either past practice or the applicable agreement, his remedy was to obey the order and then invoke the contract grievance machinery. There are some very narrow exceptions to the "work now, grieve later" principle. An employee may properly refuse to comply with a supervisor's order when performance of the instruction could jeopardize the claimant's safety or when the order is prohibited by law or when the order is completely unrelated to the workplace or to the activities of the company. None of the exceptions are applicable in this case. Claimant was ordered to perform an assignment which was safe, legal and related to the workplace. Claimant had no right to disobey the order or to engage in self help. Thus, claimant committed insubordination on October 24, 1978.

We also find that claimant used foul language during the discussion in the superintendent's office. Abusive words are often excused because the language of the shop is earthy. Third Division Award No. 20077 (Lieberman). In this case, claimant was so upset about the order to work on passenger engines that he allowed his temper to get out of control. While we cannot condone claimant's outburst, we will consider the surrounding circumstances when reviewing the penalty.

Insubordination is a flagrant offense which justifies a severe penalty. However, the organization correctly asserts that the penalty for insubordination cannot be arbitrary or excessive. Third Division Award No. 19925 (Lieberman). In this case, we rule that claimant's time out of service is sufficient discipline to impress upon him that he has a contractual duty to faithfully follow his supervisor's directives. As far as the abusive language charge is concerned, a reprimand is sufficient punishment. We note that claimant had been previously disciplined for insubordination and, therefore, we will not tolerate any future insubordination by this claimant. We are providing the claimant with his final chance to prove that he can diligently comply with his supervisor's orders.

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Award No. 8714  
Docket No. 8603  
2-CR-MA-'81

The claimant shall be reinstated, with seniority unimpaired, but without back pay.

A W A R D

Claim sustained but only to the extent consistent with our 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 6th day of May, 1981.