

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
National Railroad Passenger Corporation

Dispute: Claim of Employees:

- (1) That the decision of the Investigation Officer that Mr. Flowers be dismissed from service, was unwarranted and unjustified.
- (2) That, therefore, Mr. Flowers be returned to service with all rights, privileges and benefits restored, and
- (3) That he be compensated for all lost time, including overtime and holiday pay.
- (4) That he be made whole for his vacation rights, health and welfare benefits, unemployment, sickness and retirement and/or any and all other benefits he would have received or accumulated had he not been suspended and then dismissed from service.
- (5) That this is a continuing claim commencing May 5, 1978 and continuing until the Claimant has been returned to 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.

Claimant was a regularly assigned electrician employed by the Carrier at its 21st Street Facility, Chicago, Illinois.

The Organization contends that on the morning of May 5, 1978, during safety meeting, the claimant contended that an overhead crane was unsafe as he observed that there was a steam leak pouring water and steam onto the 480 volt electrical system that provided power to operate the crane; that he was concerned about this as he knew there was no emergency escape ladder or other means of leaving the crane if the power failed, and further there was the danger of being shocked or electrocuted due to the circuits being wet. The claimant considered the condition constituted a serious safety defect.

The claimant was instructed to operate the crane and refused to do so. He was immediately suspended from the service and cited for formal investigation to be held on May 10, 1978, in connection with the charge:

"In that you refused to operate overhead crane when instructed to do so, at 0750 A.M. on May 5, 1978."

He was also charged with violation of Rules "A", "I", "K" and "Y" of the Carrier's Rules of Conduct.

Following an agreed upon postponement, the investigation was held on May 18, 1978, and on May 26, 1978, claimant was dismissed from service.

In the investigation it was developed that on April 10, 1978, the claimant had refused to operate the same crane, contending that it was in an unsafe condition; that the crane was inspected by the engineering department and found to be in a safe condition. It was also brought out that on May 5, 1978, following the suspension of claimant, the crane was inspected and found to be in a safe and operable condition, and that the crane had been in use by other people before and after May 5, with no difficulties reported.

Based upon the entire record, we consider that the Carrier acted hasty in suspending claimant from service the early morning of May 5, 1978, prior to having the crane inspected. However, as it turned out that the crane was in a safe and operable condition on May 5, 1978, claimant should have followed the instructions of his supervisors and operated the crane. Discipline was warranted, but we consider permanent dismissal excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

A W A R D

Claim sustained to the extent indicated in 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 2nd day of September, 1981.