

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

Parties to Dispute: (Brotherhood of Railway Carmen of the United States
(and Canada
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(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That under the terms of the current agreement, Carman O. O. Davis was unjustly held out of service pending formal investigation and decision commencing August 1, 1979.
2. That Carrier be ordered to reimburse Carman O. O. Davis for all lost wages, vacation credits, Railroad Retirement credits, insurance premiums and any and all other benefits that he is deprived of account being removed from service August 1, 1979, and that Carrier restore him to service with seniority rights unimpaired and vacation credits intact.

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 O. O. Davis, Freight Car Welder at Carrier's Pine Bluff, Arkansas facilities, was discharged for insubordination. A hearing into the matter was held on August 14, 1979. As a result of that hearing, Claimant was dismissed from service by letter dated August 20, 1979. A review of the record of said hearing reveals that Claimant was given a full and fair hearing and was granted all procedural and substantive rights required by Agreement.

The record reveals that Claimant was guilty of insubordination in failing to comply with instructions of his supervisor.

On July 19, 1979, Claimant's supervisor wrote him a letter instructing him to repair two Hydra-Cushion cylinders per day or furnish a valid reason for not doing so. On the dates of July 20, 24 and 26 Claimant did not repair two Hydra-Cushion cylinders as instructed. When questioned by his supervisor why he had not completed the two Hydra-Cushion cylinders as instructed on the dates in question, Claimant replied "no reason".

During handling of the dispute on the property the Organization contended that Carrier attempted to revise Rule 1-1 of the controlling Agreement and establish the Claimant's duties on a "piece work" basis.

Rule 1-1 reads as follows:

'Eight (8) hours of service will constitute a day's work. Employes coming under the provisions of these rules, except as otherwise provided for, will be paid on an hourly basis.

NOTE: The expressions 'positions' and 'work' used in Rule 1-2 refer to service, duties, or operations necessary to be performed the specified number of days per week, and not to the work week of individual employes."

The term "piece work" implies that compensation be based on the number of units produced. At no time was Claimant's compensation based on number of units produced or repaired. Claimant was paid the hourly rate as provided for in the current Agreement regardless as to the number of units produced. Therefore, Rule 1-1 of the Agreement was not violated.

This Board has consistently stated in awards that insubordination was grounds for dismissal. We have been reluctant to substitute our judgement for the judgement of the Carrier in such cases and have avoided reinstating discharged employes who have been found guilty of such offenses. We have, however, on some occasions reversed a Carrier's action if we thought the discipline imposed was arbitrary or capricious, or the discipline had by the time of our deliberations served its purpose.

In the instant case, Claimant had 27 years of service with the Carrier. Claimant's record does not show that he was ever disciplined previously. The Board thinks the discipline imposed to date has served its purpose. Claimant must be made aware that if he is involved in any further incidents of insubordination his discharge would be imminent. This Board would, without doubt, deny a further chance to return to work.

A W A R D

Claimant is returned to service without any back wages or payment for lost benefits.

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 6th day of January, 1982.