

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

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

Dispute: Claim of Employes:

1. That Carman-Tentative, Phillip R. Castle was unjustly dismissed from service as result of investigation held in the office of General Plant Manager, Raceland Car Shop at 10:25 a.m., Wednesday, July 26, 1978 in violation of Shop Craft's Rules 37 and 38.
2. Accordingly, Carman-Tentative, Phillip Castle is entitled to be restored to service with seniority rights, vacation rights, and all other benefits that are a condition of employment unimpaired, with compensation for all time lost, plus 5% annual interest, reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements during time held out of service and that the entry be removed from his service record.

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.

This case arises from the claim of Carman-Tentative P. R. Castle that he was unjustly dismissed from the service of the Carrier as a result of being found guilty as charged of insubordination.

Carrier owns and operates at Raceland, Kentucky, a large railway car production and repair facility known as the Raceland Car Shop. Claimant Castle was assigned at this facility as a carman-tentative, 7:00 A.M. to 3:00 P.M., rest days Saturday and Sunday.

On July 6, 1978, Carman-Tentative P. R. Castle, at the beginning of first shift, was instructed by his supervisor to proceed to work. It is alleged that Castle refused to go to work and Mr. Jones again instructed Claimant Castle to perform welding on a car located in the Shop, and Castle again refused to do so.

In the face of this refusal to perform work as instructed, Foreman Jones contacted his supervisor, Departmental Foreman Lambert and requested his assistance. Upon approaching Mr. Castle, Mr. Lambert also instructed Castle to go to work and to this, Castle apparently replied, "I don't care whether I work here or not" and again failed to perform service as instructed. Mr. Lambert then instructed Castle that he was being removed from service.

By letter dated July 7, 1978, Castle was instructed to attend investigation in the office of the General Plant Manager, Raceland Car Shop on Friday, July 14, 1978 and was advised that he was charged with insubordination in that he failed to obey instructions of his immediate supervisor at approximately 7:30 A.M., July 6, 1978, and further threatened his immediate supervisor with bodily harm on the same date, at that approximate time.

Castle alleged that on the morning in question he was attempting to get his torch fixed. Castle's immediate supervisor, Foreman Jones, however, testified in contradiction of Castle, that he instructed Castle twice to perform service on the date in question and that both times Castle refused to do so.

It is actually of little significance whether or not Castle was having his torch repaired on the morning of the incident, inasmuch as the fact remains that he reported for work, and when instructed to do work of his craft, openly refused to obey. In this regard, perhaps most appropriate to the instant case is Third Division Award 14067 wherein the Board upheld the principle that an employe is obligated to carry out his assigned duties even when he feels aggrieved. In Third Division Award 14067, the Board stated as follows:

"The Rule is well established that an employe is required to carry out his assigned duties, even where he feels aggrieved. He is forbidden to resort to self-help, but is free to process his grievance via the established grievance machinery. He cannot refrain from performing his assignment with impunity. The corollary to this rule, couched as an exception, grants an employe the right to abstain from executing an assignment when confronted by an immediate danger to himself, property, or the public. Such immediate danger to himself, if proven, exempts an employe from performing the task.

In Second Division Award 4782, the Board stated:

"... the only way to raise an issue as to the reasonableness of a supervisor's directions is to obey and file a grievance. This is the procedure provided by the contract and must be followed. Disobedience consists of taking the law into one's own hands and is insubordination, which is proper basis for discipline."

The Board has held repeatedly that it is the duty of an employe to obey proper orders given by proper authority. Third Division Award 20030:

"It is the recognized principle of arbitral law, and especially of this Board that the duty of an employe is to obey a reasonable order and if he disagrees with such order to seek redress through the grievance machinery of the Agreement."

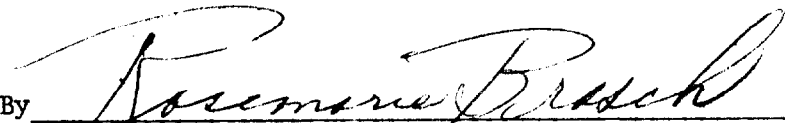
While we find basis for discipline, we conclude that the canons of progressive discipline were not followed. Based on his past work record we will restore the Claimant to his job but without back pay.

A W A R D

Claim sustained in part.

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 10th day of March, 1982.