

The Second Division consisted of the regular members and in addition Referee Edward M. Hogan when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
{ Western Pacific Railroad Company

Dispute: Claim of Employes:

1. That under the current Agreement Machinist Helper A. Tijerino (hereinafter referred to as Claimant) was improperly dismissed from the service of the Carrier on January 22, 1980.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage loss from date of dismissal to date of restoration 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 dismissed from the service of the Carrier following a formal investigation. The Organization's contention is that the Claimant was improperly dismissed from service because the Carrier did not prove substantial evidence to support the charges.

The crucial issue in this case is the credibility of evidence. However, this Board does not have original jurisdiction; we are not a trier of fact. It is well settled that, absent arbitrary or capricious behavior or abuse of discretion, this Board will not substitute its judgment for that of the hearing officer. Only the trier of fact receives the evidence, hears the testimony and observes the demeanor of witnesses. Only the trier of fact can weigh the probative value of evidence. Absent patently unreasonable conclusions, abuse of discretion, or arbitrary or capricious behavior on the part of the hearing officer, this Board will not overturn the Carrier's conclusions of fact.

This Board scrupulously reviews the record when the allegations of unreasonable, arbitrary or capricious behavior are alleged. Here we find none.

As to the additional charges of insubordination, this Board has held:

"Insubordination is a very serious charge in railroad labor relations. The refusal of an employe to follow the instructions of a Carrier official ordinarily is not justified unless the employe's health and safety will be jeopardized..." (Second Division Award 6339)

The general rule is obey the order of a superior and grieve later. We see no circumstances in the instant case to warrant any different procedure.

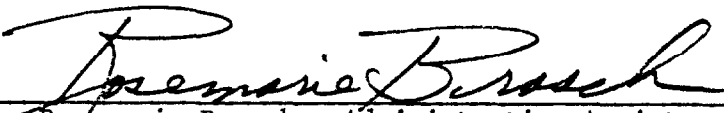
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June, 1982.