

The Second Division consisted of the regular members and in addition Referee George V. Boyle when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
(St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That under the controlling Agreement Forklift Operator, John Craig Coleman, was unjustly dismissed from the service of the St. Louis-San Francisco Railway Company on October 5, 1979.
2. That, accordingly, the St. Louis-San Francisco Railway Company compensate Forklift Operator John Craig Coleman, at the pro rata rate of pay for each work day beginning August 7, 1979, until he is reinstated to service and in addition that he receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired. Claim is also made for Forklift Operator, John Craig Coleman for actual loss of payment of insurance on himself and on his dependents, and that he be made whole for pension benefits including Railroad Retirement and Unemployment Insurance, and in addition to the money claimed herein, the Carrier shall pay Mr. Coleman an additional sum of 6% per annum compounded annually on the anniversary date of said claim.

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 employed as a laborer by the carrier at its St. Louis, Missouri shop. After being activated from reserve status and serving two years on active duty in the United States Army he returned to his regular employment in the St. Louis facility on July 3, 1979.

On the morning of August 7, 1979, the claimant was assigned to unload a car which contained fire damaged lading. The claimant refused repeatedly to comply with the order to carry out the assignment and after hearing and investigation was dismissed from the carrier's service for violation of Rule B of the General Regulations, Safety Rules and Instructions which states, "Employes who are ... insubordinate ... will not be retained in the service".

The employes argue the claimant was not insubordinate but merely, in good faith, protesting a perceived misassignment of a fork lift truck operation which

he felt was his by right of seniority, prior assignment and signed declaration of responsibility for damage to the fork lift. They argue further that even if the claimant were guilty of insubordination, dismissal would be too severe a penalty since the claimant had returned to employment barely one month before and was experiencing difficulties in adjusting to civilian life.

The Board finds, however, that the record is clear. The employe was a six year employe, with two of those years spent in the armed services where certainly insubordination is similarly not tolerated. He was not ignorant, ingenuous or inexperienced.

On the morning in question his orders were direct, unquestionably unambiguous and proper. His refusal to obey, first, the Track Repair Foreman and then, after appeal, the General Car Foreman shows no proper basis for misunderstanding or complaint. Thus he was properly found guilty of insubordination, a dischargeable offense.

As to the question of the severity of the penalty, it would appear that there are some mitigating circumstances in the case of this claimant. He had only very recently returned to civilian employment and he had experienced some personal difficulties off the job which might have caused considerable stress as evidenced in his response to orders on the day in question. While these factors do not excuse his behavior they are extenuating and therefore the Board is willing to modify the penalty. The Board does so with the warning and cautionary note to the claimant that any recidivism on his part with respect to insubordinate behavior will not find the Board similarly disposed in the future.

The claim is upheld to the degree that the claimant will be reinstated.

The claim is denied with respect to back pay and such benefits as might have accrued during the period of the claimant's separation from service.

A W A R D

Claim sustained in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 22nd day of July, 1982.