

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
(Consolidated Rail Corporation

Dispute: Claim of Employee:

1. That the provisions of the current agreement Rule 36 in particular has been violated account Sheet Metal Wk. (Plumber) Silvia Vitiello was given formal investigation, held on March 3, 1979, resulting in excessive discipline being rendered, in that he was assessed sixty (60) days suspension without pay with time held out of service to apply, he was suspended from service on February 15, 1979.
2. That because of such excessive discipline being rendered, that the Carrier be required to reimburse the claimant S. Vitiello for all time lost, restore all seniority rights unimpaired and made whole for all fringe benefits during the time out of 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 Silvio Vitiello, Plumber, was suspended on February 15, 1979 and the next day was served with a notice of hearing charging insubordination, refusal to take direct orders from foreman for work planned at N.K. Tower which was an emergency situation on Thursday, February 15, 1979. The hearing was held on March 3, 1979 and on April 5, 1979 Claimant was assessed sixty days suspension without pay, time held out of service to apply.

The Organization contends that Claimant was denied a fair and impartial hearing because he was foreclosed from asking relevant questions of Carrier's witnesses. A review of the record before this Board establishes that Claimant's defense, to wit, that had he followed his foreman's instructions he would have violated a New York City plumbing ordinance (a criminal offense), was clearly put forward at the hearing and is distinctly incorporated in the transcript thereof.

It is further contended that Claimant did not refuse to follow his supervisor's directions. This contention is not persuasive. According to the transcript of the hearing, Claimant responded to his supervisor that he could not complete the instructions as the supervisor described inasmuch as "I would be liable to go to jail" and then said "I would complete the action he described if he would authorized it, which he declined to give me." A co-employee, privy to Claimant's end of the telephone conversation with his supervisor, stated that Claimant said "I am not refusing, if put in writing I will do the job." At another point in the hearing Claimant was asked "You did not question going to the N.K. Tower and checking this out yourself?", to which he responded "After I told (supervisor) of my position, he didn't tell me to go and check it out....I did not go down."

Even assuming Claimant had some concern about the legality of the hookup described by his foreman, only a very narrow and distorted reading of that instruction by Claimant would have limited it solely to a single method of alleviating the emergency, the frozen water pipe. It is clear from the record that Claimant was being instructed to go to the site of the frozen pipe and to attempt to correct it with a suggested method. Implicit and unmistakable in the instruction to this veteran employee was the broader direction to physically present himself at the site of the problem and to address himself to its correction. Instead, Claimant chose to play "locker-room lawyer" at long distance with his foreman, and the latter appropriately concluded that Claimant's response was a refusal and did not continue any further with the debate. That there was a proper way for an employee equally concerned as Claimant to have responded is furnished by the testimony of yet another veteran employee who was subsequently asked to correct the problem. Mr. S. Mazzarella was asked:

- Q. On this same date did you report to this job?
A. Yes.
Q. Did you do this under protest?
A. Yes.
Q. Did you inform any supervisor or your foreman that you were doing this?
A. No, I told the Committeeman....
(if) main broke I wouldn't be responsible....

In short, unlike Claimant the other employee did report to the job.

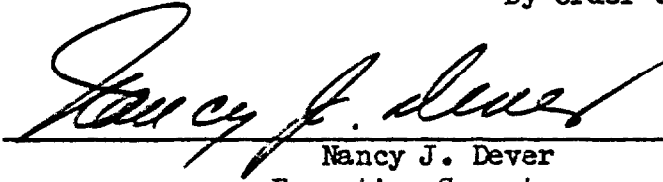
There was substantial evidence to sustain the Carrier's decision to discipline Claimant. As his refusal to respond was part of an ongoing pattern of disregarding foremen's instructions (See Award No. 9553 Second Division) the penalty imposed was reasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 17th day of August, 1983.