

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Southern Railway Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Laborer Floyd Goodwin was unjustly suspended from the service of the Southern Railway System, effective August 16, 1982, through September 12, 1982, after a formal investigation was held beginning August 23, 1982, in the office of Mr. F. L. Brown, Master Mechanic, Inman Yards, Atlanta, Georgia.
2. That accordingly, Laborer Floyd Goodwin be restored to service with all seniority rights unimpaired, vacation, health, and welfare benefits, hospital, life and dental premiums be paid, and compensated for all lost time at the pro-rata rate of pay effective August 16, 1982 through September 12, 1982, both dates inclusive.

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 employes 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 were given due notice of hearing thereon.

Claimant, Floyd Goodwin, was dismissed following a preliminary investigation on August 16, 1982 by reason of the charge of "insubordination to your foreman." Claimant requested and was granted a formal investigation, and as a result Claimant's discipline was reduced from dismissal to suspension from service for a period of twenty (20) work days.

The evidence in the record shows that Claimant was approached by his foreman, and requested to do some general cleaning of the rip track in Inman Yards, Atlanta, Georgia. The Claimant is alleged by Carrier's foreman to have replied by stating that he, Claimant, "... could not do two things at one time, fool."

The Carrier argues strenuously that the evidence was sufficient to establish Claimant's guilt of the charge of insubordination; and that the discipline was reasonable. The Organization contends the record does not support the charge that Claimant used such language in speaking with the foreman.

Although the Organization called a number of witnesses on Claimant's behalf, three of the witnesses did not hear the conversation; and one admitted to not having heard the entire conversation clearly. This Board will accept upon review of the record the credibility that the hearing officer placed upon the foreman's controverted testimony as to the substance of the conversation. The issue is whether such a statement in the particular context of the evidence presented to this Board constitutes insubordination.

While it is not the position of the Board to endorse or sanction Claimant's demeanor towards his foreman, the record before this Board does not substantiate the charge of insubordination. While accepting the credibility of Carrier's foreman, it is the function of this Board to consider how the entire record reveals Claimant's statement to have been understood by the witness at the moment of the incident. The charging foreman testified upon cross-examination as follows:

"Q. What did you tell him to do?

A. I asked him to clean up, to pick up some blocks that was [Sic] lying on the floor.

Q. Did he tell you that he wasn't going to do it?

A. No, he did not get to that. Yet he told me that he could not do two things at one time, fool... these are the statements that he made.

Q. What are the first things that you had him to do?

A. I had not given him any verbal instructions."

Later, upon questioning by Claimant the foreman responded:

"Q. And I called you a fool and refused to do the work?

A. Well you called me a fool, so that was direct insubordination so I did not want to pursue any-more of your anger, so I decided to get it dealt with my superior supervisor."

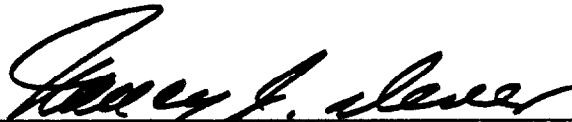
Webster's New World Dictionary (1970) defines "insubordinate" as: "not submitting to authority; disobedient." The record does not disclose Claimant refused to obey an order of his superior officer. The Claimant was charged with insubordination, not with being churlish, surly, impolite, scornful or gruff. There is no evidence even from Carrier's own foreman that Claimant refused to obey the order or directions he received, and therefore, the Board is persuaded by all the evidence and record before it, that while Claimant was neither civil nor tactful, the charge of insubordination was not established.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1984.