

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Burlington Northern Railroad

Dispute: Claim of Employees:

1. That in violation of the controlling Agreement, Rules 18 and Appendix "C" Section 12(b) in particular, the Burlington Northern Railroad denied Electrician P. O. Smith preference to available light work in his line and ignored his seniority in assigning vacation relief work.
2. That the Burlington Northern Railroad failed to meet its required burden of proof to justify its actions in the subject case and in violation of Rule 35(g), unjustly suspended Electrician P. O. Smith for ten (10) days simply because he would not expose himself to further back injury or relinquish his contractual right, earned by his long and faithful service, to seniority preference to such light work available in his line.
3. That accordingly, the Burlington Northern Railroad be ordered to compensate Electrician P. O. Smith eight (8) hours pay at the pro-rata rate for each of the ten (10) days he was unjustly suspended from service beginning April 26, 1982 and ending May 5, 1982. Claim also includes compensation for and/or restoration of all lost vacation benefits and any other rights and privileges to which he is entitled under prevailing schedule rules, agreements or laws and that the mark be removed from his personal 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 employee or employees involved in this dispute are respectively carrier and employees 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.

The Claimant has been in the service of the Carrier for 23 years. He was employed as an Electrician at the Carrier's 14th Street Coach Yard, in Chicago, Illinois, at the time of the events giving rise to the instant claim.

As a result of an investigation that was held on April 1, 1982, the Claimant was suspended from service for 10 days commencing April 26, 1982 for absenting himself from duty without proper authority and for failing to comply with instructions from proper authority on March 19, 1982.

The record discloses that the Claimant was given a work assignment by his Foreman on March 19, 1982. It is undisputed that the Claimant refused to perform the duties, as assigned, after which he left work without obtaining permission from supervision. The Claimant provided no reason for refusing to perform his assigned duties.

The Organization argues that the Claimant's actions were justified due to a previous back injury which occurred while performing the same duties to which he was assigned. The Carrier is not required to speculate on the reasons why an employee refuses to perform assignment, and then absents himself from service without receiving permission to do so. Furthermore, there is no evidence in the record to warrant the conclusion that the Claimant had back problems.

Rule 18 which provides, in relevant part, that an employee whose long and faithful service entitled him to "be given preference to such light work in his line as he is able to handle", is of no assistance to the Claimant. It is unreasonable for an employee to invoke the benefit of Rule 18 (and to do it silently), at the instant a Supervisor gives an employee an order to perform a duty which he considers not to his liking. In the circumstances, it was the Claimant's responsibility to comply with the order and grieve later. By failing to do so, the Claimant violated Rules 570 and 576 of the Safety Rule by absenting himself "from duty *** without proper authority" and by failing to "comply with instructions from proper authority".

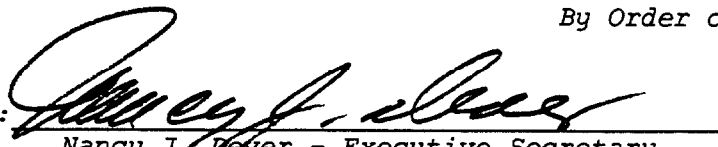
Based upon the record, the Board is persuaded that the suspension of the Claimant for ten days was not arbitrary and unjust; nor was the penalty imposed, an abuse of managerial discretion.

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 23rd day of January 1985.