

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

Parties to Dispute: ( International Brotherhood of Firemen  
( and Oilers - System Council #11,  
( AFL-CIO  
(  
( Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the dismissal of Laborer T. E. Knowlton on August 10, 1982, was an unjust action and not supported by the facts brought out at the investigation held on August 3, 1982.

2. That accordingly, Laborer T. E. Knowlton be reinstated to his duties with full seniority rights, lost time compensation, medical benefits, and all other benefits that he would be entitled to as an employe of the Missouri Pacific Railroad Company.

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 waived right of appearance at hearing thereon.

The Claimant was employed by the Carrier as a laborer in July, 1982. Following an investigation that was held on July 20, 1982, the Claimant was dismissed from service for violation of General Rules B and N of the Uniform Code of Safety Rules in connection with being quarrelsome, argumentative and insubordinate in connection with his duties on July 14, 1982. General Rule B provides, in relevant part, that if an employee is in doubt as to the meaning of "rules and instructions", or "proper work procedure" he is required to "consult his supervisor". Rule N, in relevant part, provides that an employee "must not be insubordinate...quarrelsome or otherwise vicious".

Soon after the beginning of the Claimant's tour of duty on July 14, 1982, General Foreman Harris instructed him to clean up a puddle of water "next to the lunch room door". The Claimant proceeded to look for a hose because General Foreman Harris told him that he did not care how the water was cleaned up and that he was "just to do it." Unaware of General Foreman Harris' assignment to the Claimant, Foreman Abernathy instructed Claimant to clean up a puddle of water "at the south end of the shed". After checking "on some other things" Car Foreman returned to the "south end of the shed", but the Claimant was not there and the water puddle was not cleaned up. It seemed that the Claimant went to look for a hose to blow the water off. When the Claimant returned to the area, Car Foreman Abernathy told him that he did not need a hose and all that he needed was a broom to do the job. There was a conflict in testimony concerning whether or not the Claimant was sweeping the water as instructed by Car Foreman Abernathy. It is undisputed however that Car Foreman Abernathy told the Claimant to go home. Thinking that he was "fired" and "needed a witness at the Rip Track", the Claimant went to the office and called his Local Chairman, V. Goston to tell her what had happened. During the course of his telephone discussion with Local Chairman Goston, General Foreman Harris interrupted him and requested him to come to his office.

It was in the General Foreman's office that the events occurred which precipitated the dismissal from service of the Claimant and prompted the filing of the instant claim. It is undisputed that General Foreman Harris instructed the Claimant to return to the "Rip Track" to get the water swept up" and the Claimant responded by stating that he had to call his Local Chairman and Harris told him again "to return to work and get the water swept". When General Foreman Harris told him not to use the telephone and to return to work, the Claimant began dialing the telephone and continued to do so while Harris repeated that he was not to use the telephone and return to work. At this point, General Foreman told the Claimant that he was removed from service.

Based upon the record, the conclusion is warranted that the Claimant violated Rule B by refusing to follow the instructions of General Foreman Harris to return to work. Rather than telephone his Local Chairman it was imperative that the Claimant first comply with the instructions of General Foreman Harris and "grieve later". Furthermore, the record discloses that the Claimant violated Rule N by using foul language toward Car Foreman Abernathy who appeared in General Foreman Harris' office after the Claimant was informed by Harris that he was dismissed from service.

The Claimant had been employed by the Carrier for 4-1/2 years. During these years he has compiled an unsatisfactory attendance record and in November, 1981 he was given a 90 day disciplinary suspension for leaving the Carrier's property while on duty without permission and for failing to protect his assignment. The Claimant's continued defiance of General Foreman Harris' instructions to return to work followed by the use of abusive language toward Foreman Abernathy constitute extremely serious offenses. The Claimant's disciplinary record during his relatively short tenure of employment, along with the serious offenses he committed on July 20, 1982 warrants the conclusion that the Carrier's penalty should not be disturbed.

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Award No. 10266  
Docket No. 10287  
2-MP-FO-'85

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1985.