

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

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( System Council No. 6  
( Southern Railway System

Dispute: Claim of Employees:

1. That the Southern Railway System violated the current agreement when they unjustly dismissed Promoted Student Electrician R. L. Jewell from service on August 29, 1980 at Atlanta, Georgia.

2. That accordingly, Promoted Student Electrician R. L. Jewell be restored to service with seniority rights and all other rights unimpaired and be compensated for all wages lost, vacation and all other rights and benefits lost account of the improper dismissal.

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 R. L. Jewell, a two and a half year promoted Student Electrician, alleges that he was practicing cutting straight lines with an oxyacetalene torch during his lunch hour on the night of August 2, 1980 when the drum he was cutting exploded cutting him above the eye. He contends that a former Supervisor had okayed his intent to learn welding and cutting during his breaks and he further contends that another employee was instructing him on the night in question. The other employe, however, failed to corroborate this assertion and it was clear from the record that his current Supervisor had neither authorized nor even been made aware of his desire to "practice" in general, and certainly had not approved either use of the torch or destruction of the barrel on the evening in question. Further, since he was only just starting to cut at the bell ending the lunch break, it appears that his cutting activities - but for the explosion - would have interfered with his assigned duties, contrary to his assertion that the "practice" was on his own time.

Claimant was dismissed from service after preliminary investigation on August 29, 1980. Due to his injuries he had been unable to attend the preliminary investigation, despite the fact that it had been rescheduled once for his convenience. The Organization therefore requested a formal investigation. This investigation, initially set for September 5, was postponed to September 15, 1980 in order that he be present. At this time Claimant was afforded full procedural rights and had ample opportunity to offer testimony and call witnesses in his defense.

Carrier concluded after the formal investigation that, based upon the markings on the barrel and statements made by Claimant and others, his alleged motive of "practice" was not credible and that in fact he was attempting to cut the barrel in half to make a barbeque pit for his personal use. Carrier found that aside from unauthorized destruction of its property, Claimant did not observe proper safety procedures with respect to use of the torch and most seriously of all, he failed to read the red warning label on the side of the barrel, thereby seriously endangering himself and/or any others in the immediate vicinity.

Upon a careful review of the record of the formal investigation the Board is of the opinion that Claimant was not deprived of either procedural or substantive rights. The Board finds that the evidence supports Carrier's determination that Claimant's conduct on August 23, 1980 was a dischargeable offense for the reasons listed in the charges -- with one modification. The third charge -- unauthorized work resulting in a time claim from another Shop Craft -- should be modified to delete reference to the filing of a time claim. While the lack of authorization for what he was doing is indeed relevant to the discipline, the fact that a time claim was filed by another Shop Craft does not in itself prove anything about the nature of his activities, and should not be misunderstood as having anything to do with the propriety of the discipline in this case.

A W A R D

Claim denied in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1985.