

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(International Association of Machinists and Aerospace
Workers

Parties to Dispute: (

(Norfolk and Western Railway Company

Dispute: Claim of Employes:

1. The Norfolk and Western Railway Company violated Section A-1 of the schedule Agreement as amended May 1, 1983, but not limited thereto, when it arbitrarily and capriciously disciplined Machinist L. Caldwell by assessing him a fifteen (15) day actual suspension as a result of investigation held March 29, 1985.

2. Accordingly, the decision should be reversed, Machinist L. Caldwell made whole for any and all losses resulting from the discipline, and his record cleared of any reference to the charge.

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.

At the time of the occurrence giving rise to the dispute herein, Claimant was employed by the Carrier as a Machinist at Carrier's locomotive maintenance facility at Decatur, Illinois. On March 21, 1986, Claimant was notified by Carrier's Electrical Foreman to report on March 29, 1985, at 9:00 A.M., for formal Investigation:

". . . to determine your responsibility, if any, in connection with your failure to follow instructions given to you by Foreman J. A. Stephens, at approximately 1:00 PM, March 18, 1985, at the Decatur Locomotive Shop, in that, you refused to move Locomotive N&W 1553 out of the Locomotive Shop as instructed."

The Investigation was conducted as scheduled. Claimant was present throughout the investigation and was represented. A copy of the Transcript of the Investigation has been made a part of the record. From our review we find that the Investigation was conducted in a fair and impartial manner. Following the Investigation, Claimant was assessed discipline of fifteen days actual suspension.

The Board finds that substantial evidence was presented in the Investigation on March 29, 1985, in support of the charge against Claimant. The "substantial evidence" Rule was set forth by the Supreme Court of the United States as:

"Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Consol. Ed. Co. vs Labor Board 305 U.S., 197, 229)"

(Second Division Awards Nos. 6419, 11179, 11180, 11184, 11239, 11240, among others).

The evidence shows that Claimant was instructed by the Electrical Foreman to run a locomotive out of the Locomotive Shop, with the assistance of one of two Electricians then on the Locomotive. Claimant clearly refused to comply with the instructions of the Electrical Foreman, but insisted that a Machinist be called from another area to assist him. During an ensuing conversation between the Claimant and the Electrical Foreman the Claimant again refused to perform the work as instructed. The Electrician on the locomotive was then instructed to move the locomotive out of the shop, and he did so without incident.

In the Investigation Claimant contended that to have performed the work as instructed would have been unsafe because the Electricians were not competent to assist him. The record does not show that at the time of the occurrence Claimant made any contention as to a safety hazard being involved. Further, when an employe refuses to perform work as instructed because of an alleged safety hazard being involved, then it is the responsibility of the employe to prove that such safety hazard actually existed. No such proof has been presented in the present case. The record shows that one of the Electricians who was on the locomotive at the time of the refusal of Claimant, had about 19 years of service with the Carrier, and he testified that he had previously moved locomotives in and out of the shop, and, as previously indicated, he actually ran the locomotive here involved out of the shop.

It was Claimant's responsibility to comply with the instructions of the Electrical Foreman, and then complain through the grievance procedure if he considered that his rights were violated or that he had been mistreated. The Rule is firmly established: "Comply and then complain."

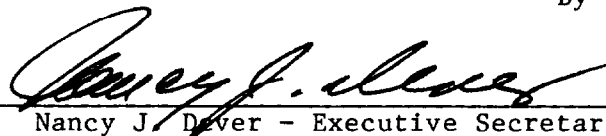
There is no proper basis for the Board to interfere with the discipline imposed.

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 20th day of May 1987.