

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11552
Docket No. 11382
88-2-87-2-45

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

1. That the Carrier erred and violated the contractual rights of Mr. Joseph F. Grayson when they removed him from service on January 29, 1986 as a result of an investigation held on January 9, 1986.

2. That the investigation was neither fair nor impartial.

3. That, therefore, he be returned to service with seniority and all other rights, benefits and privileges restored; and,

4. That he be compensated for all lost time including overtime and holiday pay; and,

5. That he be made whole for health and welfare benefits; and,

6. That he be made whole for all vacation rights; and,

7. That he be made whole for pension benefits, unemployment and sickness insurance; and,

8. That he be made whole for any and all other benefits, not specifically mentioned herein, that he would have received or would have earned had he not been withheld from service.

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 employees 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.

On November 12, 1985, a dispute occurred between the Claimant and the Relief Foreman concerning the performance of work involving checking radios.

The Carrier charged Claimant with reporting late for his duty assignment, refusing to perform assigned duties, and acting in an argumentative and insubordinate manner toward his supervisor. Following an investigative hearing, the Carrier removed the Claimant from service, effective January 29, 1986.

Claimant has not convincingly explained why it took approximately twenty (20) minutes for him to report to the Foreman for his work assignment. At the time, when he was asked by the Foreman why he was late, Claimant gave no explanation but responded with a "f... y...." Subsequently, in the course of the continuing dispute between the two men, Claimant confronted the Foreman with the language of "... would you like me to sit on your f... f...? Such behavior and language on the part of Claimant are inexcusable and cannot be condoned in the context of shop talk.

The record of this case is clear that Claimant was repeatedly instructed by various supervisors to perform the work assigned by the Foreman. Claimant understood what work he was instructed to perform, and he repeatedly stated his reason for not carrying out the instruction ... he did not want to go against a union rule. Even when Claimant was advised to deal with the matter by filing a grievance, Claimant refused to perform the assigned work. This refusal to comply with the Foreman's instruction persisted over a period of time, and he continued to refuse to perform the work even when instructed to do so by persons of higher authority than the Foreman. This is not a matter of an overzealous, inexperienced relief foreman, but rather argumentative and insubordinate behavior on the part of Claimant.

From our review of the transcript of Claimant's investigation, we must conclude that the Hearing was proper under the Agreement and that adequate evidence was developed to establish Claimant's responsibility on the charge, accordingly, the discipline assessed will not be disturbed.

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 31st day of August 1988.