

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE:

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(The Belt Railway Company of Chicago

STATEMENT OF CLAIM:

1. That as a result of an investigation held on March 25, 1986 Carman M. Sage was suspended from service for a period of two (2) days. Said suspension of Carman Sage is arbitrary, capricious, unfair, unjust, unreasonable, petty, contemptible, frivolous, ridiculous, and in violation of Rule 20 of the current working Agreement.

2. That the Belt Railway Company of Chicago be ordered to remove the two (2) day suspension from Carman M. Sage's 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.

As a result of charges dated March 19, 1986, Investigation held on March 25, 1986 and by notice dated April 2, 1986, Claimant, a car inspector with approximately seven and one-half years of service, was assessed a two day suspension (which coincided with his rest days) for allegedly becoming argumentative when instructed to inspect a train.

Clearly, it is well recognized that the workplace is not a debating society and a supervisor's instructions must be followed. Further, abusive or threatening conduct towards a supervisor requires discipline. Similarly, insubordination has no function in the workplace and if an instruction by a supervisor is questioned, the time-tested axiom of "obey now, grieve later"

must be followed. See e.g., Second Division Awards 9074, 7643. On the other hand, we are also bound by the principle that the Carrier has the burden of supporting its charge by substantial evidence in the record.

We are satisfied that the Carrier has not supported its specific charge by substantial evidence in the record in this case. First, Claimant was specifically charged with "becoming argumentative." That charge establishes the Carrier's burden. The essence of the Carrier's case, however, is that Claimant was insubordinate since he did not immediately follow the Assistant Car Foreman's instruction. As asserted in the Carrier's submission, "Claimant: 1) failed to promptly follow instructions, 2) became argumentative, and, 3) attempted to initiate a Union grievance during his tour of duty." But, Claimant was not charged with insubordination or improperly initiating a grievance. Again, he was only charged with becoming argumentative. Indeed, the record establishes that Claimant performed the instruction given to him by the Assistant Car Foreman. Because Claimant was not charged with insubordination or improperly initiating a grievance, the fact that he performed the instruction after calling the Trainmaster cannot be used to deny the Claim. For the same reasons, the Awards cited to us by the Carrier (Second Division Awards 9873, 9074, 8580, 7643, 7193, 7128, 6387; Third Division Awards 25126, 22836, 21890) are not determinative since those Awards concern specific allegations of insubordination or failure to follow instructions.

Second, with respect to Claimant's alleged argumentative conduct, the Assistant Car Foreman's testimony shows that Claimant asserted that the assignment to the East Departure Yard violated his contractual rights. His conclusion that Claimant was argumentative was because Claimant stated that he was "...violating his seniority rights...and he went over my head to the Trainmaster." At best, Claimant's conduct was a statement to him that he believed the instruction was in error. While we disagree with the Organization that argumentative conduct is not prohibited by the Carrier's rules ("argumentative" is synonymous with "contentious", which is defined as "quarrelsome", which is specifically prohibited by Carrier Rule J), we do not believe that, without more, a good faith statement by an employee to his supervisor concerning the validity of an instruction is tantamount to argumentative conduct. While employees are required to follow instructions and are further required to grieve those instructions if they believe those instructions are issued without proper authority, we can find nothing in the Carrier's rules that prohibits an employee from telling a supervisor that he believes a given instruction is erroneous. The Assistant Car Foreman's testimony shows that Claimant was disciplined because he complained about the validity of the instruction. We do not believe that substantial evidence supports a conclusion that the level of complaint by the Claimant rose sufficiently above that to be considered argumentative.

In light of the above, we do not address the other arguments raised by the Organization.

Form 1
Page 3

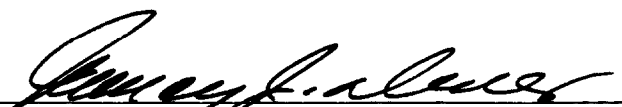
Award No. 11560
Docket No. 11407
88-2-87-2-79

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1988.