

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11739
Docket No. 11606
89-2-88-2-118

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers International Association
(Consolidated Rail Corporation (Conrail))

STATEMENT OF CLAIM:

1. That under the Current Agreement, Sheet Metal Workers Frederick J. Hill, Toledo, Ohio was unjustly assessed sixty (60) day actual suspension on August 4, 1987.

2. That accordingly, the Carrier be ordered to re-instate the aforementioned employee for all time lost, all vacation rights, all medical and dental expenses, all holiday pay, all sick pay, all bereavement pay and seniority, and life insurance.

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 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.

In this case, there is no dispute regarding Claimant's refusal to return to the Central Union Terminal rest room and no dispute regarding the untenability of his actions. Simply put, Claimant was given a direct Supervisory order on June 23, 1987 to repair the toilet seat in the women's rest room and he clearly refused to comply with the order. The Investigative record fully supports this conclusion.

By itself and under normal command circumstances, such blatant refusal would constitute grounds for serious disciplinary action since insubordination strikes at the vital core of the employment relationship. It is a serious offense that cannot be tolerated by an employer.

However, as we assess this case in its entirety, we find some degree of mitigation in Claimant's actions. Specifically, Claimant was approached by

a Conrail Police Officer on June 23, 1987 and asked to present some form of identification. He did not have his Conrail identification card in his possession and thus was refused entry by the police officer. Following a brief verbal exchange with the police officer, Claimant returned to the shop and reported the incident to his Foreman, but was again instructed to return to the Central Union Terminal to perform the assigned repair work. Claimant refused to comply with the directive, since he wanted to avoid another unsettling encounter, but he was pointedly told, "Either do the job or go home." Unfortunately, he returned home and was later charged with insubordination. An investigation was held on July 22, 1987.

As we pointed out before, Claimant was insubordinate when he refused to carry out the order, but his experience with the police officer that day helps explain his motivation and behavior. To be sure, it does not excuse his actions, since he palpably refused a direct order, but sixty (60) days suspension under these circumstances is somewhat excessive. Accordingly, we will reduce the penalty to 30 days suspension with the understanding that a subsequent refusal to comply with a direct order will lead to dismissal. Claimant is to be made whole for compensatory losses suffered.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1989.