

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
GALVESTON WHARVES COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(a) That George Welch, B. & B. Mechanic, was unjustly dismissed from the service.

(b) That George Welch be reinstated with seniority unimpaired and paid for all time lost from the date of his dismissal until he is returned to service.

OPINION OF BOARD: This is a case of discipline. To the time of the occurrence here complained of the claimant has been employed by the Carrier for thirteen years. There is nothing in the record to indicate that his record had not been good during that time. He was an hourly paid employe and the Committee calls our attention to Article VI, Rule 2 of the agreement which indicates that when interruption occurs in work because of inclement weather or other unavoidable causes only actual hours worked or time when employe is held on duty will be paid for. On March 25, 1942, the claimant worked during the morning on Pier 14 as a B. & B. Mechanic with the rest of his gang. There is evidence that a navy ship was unloading at the pier but there is nothing to show that there was any emergency which required continuous work of the gang in connection with that operation. There had been light rain during the morning which continued during the lunch hour. At one o'clock when the time came to resume work Welch told the assistant foreman, A. C. Hansen, that he did not wish to continue work in the rain. Mr. Hansen made no objection and Welch went home. The rest of the crew went to work and there was some improvement later in the weather. The next morning, March 26th, when Welch reported for work he was told to report to the office of the chief engineer. He was there advised that he was suspended for insubordination. On March 31st he was given a hearing and was dismissed from the service of the Carrier for insubordination.

The evidence does not show that after Welch said he would not work in the rain Mr. Hansen gave him any order to go on the job with the rest of the men. No protest was made by Mr. Hansen to the claimant's refusal and for aught that appears in the record Mr. Hansen agreed. In any event the Claimant would have been justified in thinking so.

The rule is well settled that this Board will not substitute its judgment for that of the management in a case of discipline. The action of the Carrier should be set aside only when it is so clearly wrong as to constitute an abuse of discretion. Awards 891, 1497, 1755. In the present case, however,

viewing the evidence most favorably for the Carrier, we can find no justification whatever for the action taken. We are unable to see any real insubordination. Even assuming that the Claimant should have returned to his job, Mr. Hansen seems to have acquiesced in his decision not to do so. To discharge an employe with thirteen years of service with the Carrier on such a flimsy pretext as this is without any justification whatsoever. There was in this instance a clear abuse of discretion on the part of the Carrier.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe involved in this dispute are respectively Carrier and Employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the agreement in dismissing the Claimant.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.