

Award No. 7581

Docket No. MS-7087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

UNITED STEELWORKERS OF AMERICA, CIO

BIRMINGHAM SOUTHERN RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of roadway laborer, Johnnie Thomas, that he has been unjustly suspended for two days. He asks that the charge against him be stricken from the record and that he be paid wages lost as a result of said suspension.

Thomas was charged with insubordination to Section Foreman Justice Glasscock on December 16, 1953. At that time, Thomas was assigned to No. 3 Section Gang under foreman Paul Thompson. Under Article 11, Rule (g) of the collective bargaining agreement in effect, laborers work in, and have seniority only within, their respective Section Gangs, except when the working force is reduced. (There was no such reduction in effect at the time in question.) Foreman Glasscock, therefore, at the time in question, did not have Thomas under his supervision and had no authority over him.

In any event, this employe committed no act of insubordination.

OPINION OF BOARD: This is a discipline case. Claimant here is a roadway laborer. He was charged with insubordination and a two-day suspension was imposed. He requests that all charges against him be stricken from the record and that he be reimbursed for all time lost.

At the time and place in question claimant was spiking ties and was working behind a motor car. Claimant placed some rocks under the wheels of the motor car and after having done so was instructed to remove same, at which time the Carrier alleges the claimant failed and refused to follow the instructions of the foreman, with the resulting investigation and penalty.

The Organization contends that this action by the Carrier was not justified since the placing of the rocks under the wheels was a safety measure taken by the claimant to protect himself and his fellow workmen; that the foreman who gave the order to remove the rocks was not the claimant's supervisor and was not familiar with the type of work being performed, which made the penalty imposed unjust.

The Respondent took the position that the placing of the rock under the wheels of the motor car was unnecessary inasmuch as there was an operator on same and said car was not moving. It was further pointed out that the claimant refused to obey instructions of a Foreman, which fully justified the imposition of discipline.

This record is replete with contradictions and conflict. Evidence was presented that the motor car was moving and that it was standing still. Witnesses testified the claimant both could not and would not remove the rock.

On two points, however, the record is clear (1) that the foreman used abusive language and (2) that the claimant had always been a good workman and had never before been the subject of reprimand or discipline.

We are of the opinion that the claimant was at least of the mind that placing rock under the wheels was necessary. Certainly the action was not taken to harm either company property or his fellow employees. Likewise, we cannot find justification or excuse for the abusive language used. While a reprimand might be found to be proper, a suspension without pay for two days constituted the infliction of a penalty that was, premises considered, both excessive and unreasonable.

We conclude, and so find and hold that a reprimand should have been given. We further conclude and so find and hold the claimant should be paid for his wage loss on the two days of his suspension.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively carrier and employees 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 effective Agreement.

AWARD

Claim disposed of in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.