



Award No. 15828
Docket No. SG-15330

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al, that:

(a) Carrier's action of removing B. H. Bradshaw from service on or about February 28, 1964, was unreasonable, and an arbitrary exercise of discretion and authority without justification.

(b) Carrier be required to reinstate Mr. Bradshaw with seniority, vacation and all other right unimpaired; compensate him for all time held out of service; and return him to his former assignment of Crossing Signal Maintainer at Batesburg, South Carolina.

[Carrier's File: SG-19972]

OPINION OF BOARD: Claimant, a monthly-rated Signal Maintainer with approximately forty one years of service with Carrier, was discharged effective February 28, 1964, for insubordination, violation of instructions from Carrier's Signal and Electrical Supervisor as well as violation of Carrier's operating Rule 703 on February 17, 1964. An investigation was originally scheduled for February 29, 1964, but was postponed at the request of Claimant until March 10, 1964.

In the first instance, Petitioner contends that Claimant was improperly charged prior to the investigation and should not have been removed from service before completion of the investigation. The record reflects that the notice of investigation received by Claimant clearly disclosed the nature of the charges that would be the subject of the investigation and fully met the requirements of Rule 23(a) of the Agreement between the parties. Moreover, Rule 23(a) in part provides that after charge or charges are made and pending investigation and decision, the Carrier may relieve an employee from service. Here, Claimant was continued in service by Carrier until the day preceding the initial date of the investigation, which was subsequently postponed at the request of Claimant. The applicable provisions of Rule 23 were duly complied with by Carrier, and we find no merit in these procedural objections.

As to the merits of the case, we find that the alleged insubordination arose out of Claimants admitted refusal to return to his headquarters at Batesburg, South Carolina on the night of February 17, 1964 in violation of specific instructions from his supervisor. Instead, Claimant spent the night at his home in Columbia, South Carolina and offered no plausible explanation for his refusal to obey instructions. Such conduct clearly constitutes insubordination.

We have consider Petitioner's contention that Claimant was the subject of discriminatory treatment by Carrier and that another employe also violated Carrier's instructions by returning to Columbia, South Carolina with Claimant on February 17, 1964. Although Claimant may have believed that he was being discriminated against by Carrier, he should have employed the grievance machinery of the Agreement between the parties instead of violating clear and specific instructions issued to him by Carrier. Award 8712.

The final point at issue raised by Petitioner is that if the Claimant is found guilty, the discipline imposed was excessive, arbitrary and capricious. A thorough examination of the records reveals a positive intent on the part of Claimant to substitute his judgment for that of the Carrier's supervisor. It is well established that the Division will not overturn a decision of the Carrier in the absence of a finding that the discipline imposed was unfair, capricious or arbitrary. Award 14358 and others. No such error or abuse of discretion is found in this case. Accordingly, the claim will be denied.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1967.