



Award No. 16744
Docket No. CL-16455

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6013) that:

(a) Carrier violated the Agreement at Atlanta, Georgia, when it suspended Mr. C. H. Bell, Key Punch Operator, in the Payroll Accounting Department, for fifteen (15) days, beginning January 8, 1965 through January 22, 1965, when he declined to work overtime account not feeling physically able to perform four hours' work after filling his own assignment for eight (8) hours.

(b) Mr. Bell shall be compensated at the rate of \$19.37 each day, for fifteen (15) days beginning January 8, 1965 through January 22, 1965, covering the period of suspension.

OPINION OF BOARD: On January 7, 1965, it became apparent to management that a group of keypunch operators in payroll accounting would be needed to work overtime. The work was offered to the employees in order of seniority, but an insufficient number accepted. The supervisor thereupon directed the more senior employees to handle the overtime. Claimant refused. He said that he "did not feel like working." As a result of this refusal, Claimant was suspended for 15 days.

Two defenses are raised by the Employees. One is that Claimant was ill, and, therefore, was justified in his refusal. However, no such excuse was given at the time he declined to work, and no evidence of illness was subsequently offered. Since the record is devoid of any proof which supports that defense, it must be found to be without merit.

The other defense made by the Employees is that Claimant had the right to decline the overtime assignment because he was a senior employee. According to the Employees' ex-parte submission, "the junior keypunch operators should have been directed to protect the overtime, and not the senior em-

ployes." This is "the custom pretty well adhered to over the system", it was said.

The issue in this case is not the custom throughout the system but the propriety of an employee's refusal to accept a direct order of management. (It appears that regardless of the system-wide practice alleged by the Employees, this is the first instance where there were insufficient volunteers among these keypunch operators.)

There is no specific Rule on the subject, and management was obliged to make a determination as to who would be assigned the work. It chose the senior employees, including Claimant, who receive preference for overtime work. Whether that was the best approach, or even the customary approach, cannot be dispositive, for what is involved in this case is whether or not the order was disobeyed without good cause.

It is axiomatic that, absent such reasons as health or safety, an employee must comply with management's instructions and, if the propriety of the instructions are disputed, grieve thereafter. Many eloquent words have been written about the chaos which would result if each employee had the right to deliberate over each instruction — and then opt not to comply with it.

Insubordination was clearly manifested in Claimant's refusal to do the work because he "did not feel like working." Had he been ill, and said so, and then established that fact, his refusal to work would have been for proper cause. However, Claimant's rejection of an order to work because he did not feel like working is not proper. It constitutes good cause for discipline and warrants the suspension imposed by 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 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 8th day of November 1968.

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