

Award Number 17315

Docket Number MW-17921

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD
COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Laborers J. W. Uthe, J. F. Crawford, C. Burris, C. R. Duffield and L. E. Diegelman was unjust, improper and on the basis of unproven charges. (System file 4-D-293).
- (2) Laborers J. W. Uthe, J. F. Crawford, C. Burris, C. R. Duffield and L. E. Diegelman be reinstated with all rights unimpaired and compensated for all wage loss suffered in accordance with the provisions of Rule 19."

OPINION OF BOARD: The five Claimants in the instant case had worked variously for Carrier from eleven (11) to twenty-five (25) years at the time they were charged, investigated and dismissed for refusing to ride in a certain Carrier vehicle to a job site in violation of Carrier's General Rules "E", "N", and "O".

Those parts of Carrier's Rules, Form G-147 Revised, relied on here by Carrier, read as follows:

"Rule E—Employee must render every assistance in their power in carrying out the rules and instructions. Courteous cooperation between employees is required for proper function under the rules and instructions."

"Rule N—Employees who are careless of the safety of themselves and others, negligent, **insubordinate**, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner and handle their personal obligations in such a way that their railroad will not be subject to criticism or loss of good will, **will not be retained in the service.**" (Emphasis Added)

"Rule O—Employee must report at the proper time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with or substitute others in their place without proper authority."

Employees contend that this was not a case of insubordination, but rather a refusal to ride in an unsafe vehicle to a non-emergency job site.

Further, Employees contend that the length of service of these Claimants and the lack of disciplinary records against them should mitigate against the ultimate discipline of dismissal.

This Board is compelled to state that the hearing and the transcript thereof sheds little light on what actually happened or why these men of long, and evidently satisfactory, service should refuse to ride in a particular truck. In First Division Award 12031 it was stated: "Obviously there must be some one in authority if a railroad is to function. Engineer Ray refused to acknowledge orders from those in authority and should such action be condoned it could easily lead to confusion and the disruption of proper operation of the railroad." It was also said in First Division Award 15509 that "willful disobedience of orders constitutes insubordination which merits discipline. If the Carrier is to have efficient operations on its railroad, employees must be relied upon to obey operating instructions and orders." This Board subscribes to those statements.

However, lamentable though it may be that the representatives of these Claimants at the hearing did not make it clearer as to why these men did not articulate their reasons for refusing to ride in that particular vehicle, we feel that both safety and length of service must mitigate from allowing Carrier to mete out the extreme punishment upon these Claimants. We feel, as was said in First Division Award 17398, that this was not arbitrary or intentional resistance to authority. The Board said there: "Essentially Claimants were insisting upon safety devices or some substitute, to which they honestly believed they were entitled. The Board said there: "Essentially Claimants were insisting upon safety devices or some substitute, to which they honestly believed they were entitled. And although the Assistant Road Foreman of Engines was as reluctant as Claimants were to force the issue, it seems plain that Claimants intended to stand their ground."

This Board finds that the nearly two years time during which these Claimants have been out of service without pay should be sufficient discipline for any wrongdoing, although not malicious, on their part. However, the Board in no way backs away from its position that Carrier must maintain its equipment properly and measure up to the strictest safety standards on its property if it expects the obedience, discipline and respect of its employees.

Consequently, we deny the claim as to back compensation, but we sustain that part of the claim requesting reinstatement.

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

That the parties waived oral hearing;

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 violated.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1969.



Award No. 15841

Docket No. TE-16625

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Atchison, Topeka and Santa Fe Railway, that:

1. Carrier violated the Agreement between the parties by imposing the severe, harsh and arbitrary discipline of dismissal from its service upon Printer Clerk Vivian Harley, effective May 30, 1965, alleged violation of Rules 19, 20 and 21, General Rules for the Guidance of Employees, 1959 Edition.

2. Carrier shall now reinstate Claimant Harley to her position in the Los Angeles Relay Office with seniority, vacation and all other rights unimpaired, expunge her personal record of the charges against her, and compensate Claimant for a day's pay each and every day held out of service, May 30, 1965, forward.

OPINION OF BOARD: An analysis of the record in this grievance indicates that there is a single issue to be determined by this Board: Were there matters in extenuation which, if allowed and considered, would have mitigated the sanctions imposed.

Claimant was charged with being twenty minutes late for work, being insubordinate, and falling asleep on the job.

At the hearing the Organization representative, in an effort to corroborate Claimant's testimony that she had taken a pill to relax her nerves and this caused her to fall asleep, attempted to read a letter from Claimant's doctor stating that he had changed her medication because it caused "drowsiness."

Carrier's representative at the hearing refused to consider the letter on the grounds that the doctor was not available for cross-examination.

Had such evidence been considered, it is clear that it would have been a factor mitigating the severity of the sanctions imposed.