

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20770
Docket Number MS-20931

Louis **Norris**, Referee

(**Alois S. Golombowski**

PARTIES TO DISPUTE: (

(**Chicago** and North Western Transportation **Company**

STATEMENT OF CLAIM: This is to **serve** notice, as required by the rules of the National Railroad Adjustment Board, of **my** intention to file an **ex parte** submission on November 1, 1974, covering an unadjusted dispute between **Alois Golombowski** and Chicago and North Western Railway co., Wisconsin Division, involving the question:

Wrongful discharge of employee, **Alois Golombowski**, beginning on August 9, 1971, with loss of all seniority and other rights, including wages.

OPINION OF BOARD: On August 7, 1971, Claimant was chief clerk on the midnight to 8:00 a.m. shift at National Yard, Milwaukee. Upon coming on duty he was advised by Yard Clerk **Rummel** that there was a note on his desk. Claimant read the note and threw it into the wastebasket. This note contained typed instructions from **Claimant's** superior, **Trainmaster Lundell**, for Claimant to have the yard clerk perform certain clean up work at two specific locations. In fact, such work was not performed, Claimant having instructed the Yard Clerk to make the yard check and do nothing else. On August 9, Claimant was duly notified to report for investigation on August 12, on a charge of insubordination on August 7, for failure **to comply** with the order of **Trainmaster Lundell**. **Subsequent** to such investigation, **Claimant** was dismissed effective as of August 9, 1971.

The above facts, although **summarized** here for brevity, were fully testified to during the **courae** of the investigation. Claimant has a record of service of 27 years duration. His statement of claim asserts "wrongful discharge beginning on **August** 9, 1971, with loss of **all** seniority and other rights, including wages".

Initially, the Carrier contends that there is a variance in language between the Notice of Intent and the Statement of Claim in that the latter has been expanded to include **demands** for "reinstatement", "insurance **premiums**" and a "new hearing". As to "reinstatement", under the express **language** of Rule 22(c) of the Agreement, this is implicit in the claim of wrongful discharge, if sustained. Accordingly, this objection is not sustained. As to the claim for insurance premiums and **a** new hearing, the Carrier's objection is well founded. There is no existing rule in the Agreement between the parties to support such demands. The Board is therefore without authority to grant such **claims** and has so held in numerous past decisions. Accordingly, that portion of Claimant's Statement of Claim is dismissed.

Petitioner raises certain procedural issues, as follows:

1) Defective notice of hearing. A clear reading of the Notice demonstrates that this objection is without merit. The Notice complied fully with the provisions of **Rule 22** and contained clear and concise language as to the precise nature of the charge against Claimant.

2) The fairness of the investigation. We have carefully reviewed the entire transcript and reread the testimony of all the witnesses. It is amply clear that the hearing was fairly and properly conducted in full compliance with **the Rules**. Proper questions were put and answers obtained. Claimant was represented by the Local Chairman, and full opportunity was given him to present his case, cross-examine witnesses, and to bring forth all witnesses he desired. Nor can we reach any adverse conclusion by reason of the approximately one hour duration of the hearing. The record of the investigation speaks for itself and fully demonstrates its propriety and **fairness** to Claimant. Accordingly, this objection is not sustained.

We come now to the merits of this case, in connection with which Petitioner presents the following issues:

1) The adequacy of the instructions. Although there was some variance in the method by which the instructions were delivered to Claimant, the evidence adduced at the hearing is conclusive that a typed note containing **Trainmaster Lundell's** specific instructions, and under his typed name, was in fact delivered to Claimant. Therefore, this objection is not sustained.

2) The asserted failure to bulletin the Yard Clerk's change of duties. This contention is entirely without merit and is irrelevant to the **charge** of insubordination. **Claimant** may have been entitled to raise this claim as a **grievance** under the provisions of the Agreement, but he could not arbitrarily refuse to comply with a proper order from one acknowledged to be his superior in authority.

This principle is well established in prior Awards of this Board. See Award Nos. 16744 (Friedman), 16236 (**Devine**), 16074 (**Perelson**) and 20030 (**Eischen**).

Upon the full record of this case, and particularly upon the testimony fairly and fully presented at the investigation, there is no doubt that Claimant refused to comply with a proper order of his superior. **It** is a recognized principle, supported by many past precedents in this Division, (some of which are cited above) that an **employee** has the duty of obeying a reasonable order. In fact, Claimant failed completely to refute these charges or to offer **any** explanation for his arbitrary conduct, other than some vague references to "family problems" and to a "misunderstanding".

On this record, therefore, and the evidence adduced, no **mitigating** circumstances are presented to support a conclusion other than the **inescapable** one that Claimant's conduct constituted insubordination, **pure** and simple. As a matter of long standing **policy**, amply supported by past **precedents**, and under the facts and circumstances of this case, **this** Board will not substitute its judgment for that of the Carrier in evaluating such **evidence**. This is particularly true where substantial probative evidence is presented in the record supporting the charge against Claimant.

See Award Nos. 6387(Lieberman) Second Division, 19487 (Brent), 17914 (Quinn) and 15574 (Ives).

Finally, whereas, the penalty of dismissal is severe, **particularly in view** of Claimant's 27 years of service, there **is** substantial evidence in the record, particularly his personal disciplinary record, to support the Imposition of the discipline of **dismissal** based on insubordination. The action of the Carrier in this case, therefore, cannot be **decmed** arbitrary, capricious, or an abuse of discretion.

See Award Nos. 18362 (Ritter), 20030 (Eischen), 20189 (Sickles), 20651 (Quinn), 5813 (Stark) Second Division and 17698 (Rubenstein).

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.