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NATIONAL RAIL ROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20986 Docket Number MW-21149

Joseph A. Sickles, Referee

(Brotherhood of Maintenance of Way Employes

PARTIES TO DISPUTE:

(Southern Pacific Transportation Company (Pacific Lines)

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

- (1) The dismissal of B&B Welder **Pedro_Meza** for alleged **insubor- dination** was without just and sufficient cause **/System** File 011-181 (M)/.
- (2) **B&B** Welder Pedro Mesa be reinstated with seniority, vacation and all other rights unimpaired and that he be compensated for all wage **loss** suffered in compliance with the Rule 45(b).

OPINION OF BOARD: On December 21, 1973, Claimant was notified of a hearing concerning an asserted violation of Rule 801:

"Employes will not be retained in the service who are insubordinate."

Subsequent to the hearing, Claimant was dismissed **from** service **-** for refusal to accept instructions **from** his **immediate** Supervisor on December 17, 1973.

The record demonstrates that on December 17, 1973, Assistant Foreman, Comeau, and Claimant had a confrontation concerning work duties. Comeau stated that Claimant refused to perform an assignment in the manner instructed. After; explanation of the reasons why it should be done in a certain way, Claimant "flatly refused to work" with the Assistant Foreman. During a further discussion that day, Claimant advised an Assistant B&B Supervisor that he couldn't take orders from an Assistant Foremen - however, he desired to discuss the matter with his "union man." On December 19, 1973, Claimant reiterated his statement, to the Supervisor, that he "couldn't take orders from the Assistant Foreman."

The record **is** clear to this Board that Claimant was aware that **Comeau** was an Assistant Foreman and that company rules required that he take orders from a person designated as such.

Claimant testified that on December 17, he made a suggestion to Comeau regarding an alternate method of performing the task, and that Comeau gave him an option of how to do the work. Carrier witnesses deny Claimant's version. Moreover, Claimant denies that he told the Assistant Supervisor on that date that he would not take orders from Comeau. He concedes, however, that on the later date, he expressed that he would not follow the Assistant Foreman's orders.

Even if we were to conclude that the evidence supported only the Claimant's version of the events of December 17, 1973 (and we make no such conclusion in that regard), we would still be faced with the Claimant's admitted statement on a later date. After he was fully advised of the pertinent factors, and after he had a significant period of time to contemplate the consequences of his action; he still persisted in his adamant refusal to follow the orders of properly constituted authority. At that point, Claimant was clearly insubordinate (even without regard to his actions and statements of the previous date), and the Carrier was **justified in** taking action to dismiss him from service.

<u>FINDINGS</u>: 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 Employes involved in this dispute are respectively Carrier and Employes 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

TTEST: Executive Secret

Dated at Chicago, Illinois, this 27th

day of February 1976.