

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21059
Docket Number MW-21154

James C. **McBrearty**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Louisville and Nashville Railroad Company

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

(1) The dismissal of E. J. Engler was **without** just and sufficient cause and in violation of the Agreement **[System File 1-12(37)/D-105382 E-306-141**

(2) Mr. E. J. Engler shall be restored to service with seniority unimpaired and be allowed pay at the Assistant Foreman's rate for all time lost since his dismissal on April 22, 1974.

OPINION OF BOARD: Claimant was suspended from service on April 22, 1974 for allegedly refusing direct order of his foreman to return to his regular position as anchor wrench operator. Suspension was converted to dismissal on May 23, 1974, following hearing on May 7, 1974.

Claimant was in Rail Laying Gang **No. 53**, which was laying rail on the Morganfield Branch near Nebo, Kentucky. On Friday, April 19, 1974, Claimant was permitted to work the position of Assistant Foreman in Gang **NO. 53**. On this date Claimant was ordered to take five men and **make a** proper runoff at Bridge 379, located at M.P. 284.6. Claimant's foreman inspected this work at **5:30 P.M.** that day, and found that the work had not been properly performed, and that the track was unsafe for the regular 25 MPH speed of trains. Claimant's foreman thereupon had to issue a "Slow Order" of 10 MPH.

On Monday, April 22, 1974, Claimant's foreman told Claimant that his work on Friday, April 19 had been unsatisfactory, and therefore he was relieving Claimant from the Assistant Foreman's position. Foreman directed Claimant to return to his regular assigned position **as** anchor wrench operator. Claimant refused to accept his foreman's instructions at least three times, once in the presence of another Machine operator, who had been called over by the foreman to witness the insubordination of Claimant.

The record taken as a whole, clearly indicates that **Claimants work was not** properly performed on April 19, 1974. Moreover, the **record also establishes** that Claimant was **guilty** of insubordination in **refusing to return to work** as Anchor Wrench Operator on April 22, 1974.

Claimant **argues** that he was justified in refusing his foreman's direct order, because he believed that the work which he did on April 19 was **satisfactory**, and, moreover, that the foreman **was** attempting to violate the seniority **provisions** of the Agreement by assigning him to the position of Anchor Wrench Operator. In addition, Claimant argues that the penalty of discharge is too severe for his first offense of insubordination.

The Board finds that it is not the **Claimant's** right to substitute his judgment for that of his foreman. **Furthermore**, if the Claimant truly believed that the foreman was violating the seniority provisions of the Agreement in making Machine Operator assignments, then the Claimant should have grieved such action, but not take it upon himself to be insubordinate. The rule of thumb here is, "Work now, grieve later." The work place is not a debating society, where **em-**ployes may challenge the orders of management **through** insubordinate action. Whenever **employees** refuse to follow **a** proper order of supervision, the Carrier is placed in a position where it must **immediately** take steps to eliminate such insubordination, or else the insubordination will create havoc throughout the work gang. Consequently, it is well established that dismissal is not inappropriate in cases of insubordination. (Awards 20770, 20769, 20651, 20102, 18563, 18128, 17153, 16948, 16704, 16347, 16286, 16074, 15828, 14273, and 14067).

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.