

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21810
Docket Number CL-21654

Robert W. **Smedley**, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8119, that:

1. Carrier violated Rule 22 and related rules of the Clerks' Agreement at Seattle, Washington when it disciplined Lee M. **Tillman** without notifying him in writing of the precise charge alleged.

2. Carrier violated Rule 22 and related rules of the Clerks' Agreement when it assessed Lee M. **Tillman** a 30-day suspension after belatedly preferring charges and holding investigation, and failed to prove the charge.

3. Carrier shall now clear Lee M. **Tillman's** record of all charges and pay him one day's pay for each day he was suspended from his position.

OPINION OF BOARD: This is a discipline case contesting the assessment of a thirty-day disciplinary suspension against Claimant, Mr. Lee **Tillman**, as a result of a hearing held on April 3 and 4, 1975, where Claimant appeared under the charge of being insubordinate to his supervisor, Regional Data Manager Komurka, when he refused to leave the office on March 24, 1975, at approximately **8:05** A.M., after he had been twice told to do so by Mr. **Komurka**.

We now turn to the merits-of the dispute. If there is substantial evidence to support the action of the Carrier, we will not substitute our judgment for that of the Carrier, even though there may be conflicting evidence. It is the function of the hearing officer, and not the Board, to weigh the credibility of testimony and evidence elicited at the hearings. Further, unless the action of the Carrier in disciplining an **employee** appears arbitrary or excessive, we will not disturb the discipline assessed.

We have considered numerous disputes concerning acts of insubordination of an employee to his superiors. In Third Division Award 21059, we discussed certain principles that are applicable to insubordination:

"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 employes may challenge the orders of management through insubordinate action. Whenever **employes** 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**)."

We again affirm the foregoing principles, **and,also**, note that the workplace and labor-management relations should be colored by a spirit of cooperation and civil, gentlemanly conduct by both the employer and the employee.

In this case, we have considered the evidence surrounding the entire incident which resulted in Claimant's purported insubordination. It started when he was called into Supervisor **Komurka's** office at 8:00 Monday morning **and,during** the course of this conversation, Mr. **Tillman** got up and left the office without the permission of Mr. Komurka. According to the testimony of Claimant, which was not in any way controverted by Mr. Komurka, the latter spoke in an argumentative tone of voice and, as paraphrased by **Claimant**, stated:

"He then told me that I did not look sick to him.
I told him that I was more qualified than he to judge
how I felt. He became very angry and started to harass me.

"I was not feeling well and excused myself and left his office.

I went into the Cashier Department to my desk. He followed me and started yelling at me to get back into his office that he was not through with me. I replied that I was not going into his office and be harassed."

Testimony of other **employees** in the office also indicated that the supervisor, Mr. Komurka, spoke in loud and angry terms and, at one point, even placed his hand on Claimant's shoulder and pushed him towards the door.

Given all the foregoing, and considering the record in its entirety, we are unable to find substantial evidence in the record establishing that Claimant committed an act of insubordination - an act of failure to obey a proper order of a superior. As we view it, the record clearly establishes that Mr. **Komurka**, the supervisor, became loud, belligerent and acted irrationally. There was no evidence that Claimant provoked disorder in the office nor was there any other evidence which could properly justify Mr. **Komurka's** order that Claimant go home for the day. Consequently, we have concluded that Claimant was improperly disciplined.

In sustaining this claim, we wish to affirm that the principle of "obey now - grieve later" is very much in effect. No **employee** can **properly take** matters into his **own** hands and defy orders of his supervisors. (However, we feel that in this case, it **was** the provocative conduct of the supervisor which made a mountain out of a molehill. Under such circumstances, we do not believe that the **employee** should be held responsible:

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

Award Number 21810
Docket Number CL-21654

Page 4

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:;

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1977.

