

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22380
Docket Number W-22314

Joseph A. Sickles, Referee

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

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

(1) The dismissal of Machine Operator J. H. McKissack and Track Repairman T. B. Barner for alleged insubordination was capricious, arbitrary, without just and sufficient cause and on the basis of unproven charges [System File 1-16 (39)/E-306-12].

(2) The claimants be reinstated with seniority, vacation and all other rights unimpaired and they be compensated for all wage loss suffered."

OPINION OF BOARD: On April 26, 1976, Claimants were notified of an investigation regarding asserted insubordination. Subsequent to the investigation, they were dismissed from service.

The Claimants were both absent from duty on March 30, 1976. When they returned to duty on March 31, 1976, Foreman Powers requested that they sign a form letter acknowledging they were off without permission and acknowledging the rules concerning absenteeism. Although there is no evidence that there was any disciplinary intent as it relates to the form, both Claimants refused to sign. Instead, they informed the Foreman that the vehicle in which they were traveling to work on March 30, 1976 had broken down. Further, they insisted that they had contacted a station agent by telephone to send a message by wire or radio to the Foreman (who was inaccessible by telephone) concerning their inability to report. The Claimants' testimony in this regard was confirmed, at the hearing, by time Foreman, and the testimony remains unrefuted in the transcript.

The Board is mindful of the very important obligation on the part of employees to comply with the instructions issued by their Supervisors. Further, we are well aware of the authority which holds that employees must comply with instructions (unless compliance would endanger life or limb) and grieve later if offended by the instructions.

In this dispute, it is clear that the Claimants did not comply with instructions, and instead of grieving the propriety of signing a statement they reacted by taking **matters into** their own hands.

Certainly, a refusal to follow instructions is a serious matter and is quite frequently a dismissible offense; but here, there is no, element present of potential disruption to the Carrier's operation, nor was the discipline and decorum of the work place directly threatened by the action of the employees.

We are of the opinion that the seriousness of the offense is mitigated by the facts of this case, particularly inasmuch as the Claimants had made every possible attempt to notify their Foreman of the inability to **report** and they sought to inform the Foreman of that fact when they were asked to sign the letter.

Under the circumstances, we feel that permanent dismissal is arbitrary and excessive. We will sustain a ninety (90) day suspension.- Claimants shall be reinstated to service, with retention of seniority and other benefits, and shall be reimbursed for compensation lost beyond the period of ninety (90) days.

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent stated in the **Opinion** of the Board.

ATTEST:


Executive Secretary

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of April 1979.