

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22742
Docket Number CL-22786

Paul C. Carter, Referee

DISPUTE: (Southern Railway Company
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(Brotherhood of Railway, Airline and
(Steamship Clerks, **Freight** Handlers,
(Express and Station **Employees**

FACTS OF CLAIM: Carrier did not violate the agreement with the Brotherhood of Railway, Airline and Steamship Clerks, as alleged, when it dismissed **Mr. 3. N. Webber**, Operator at Yard, **Knoxville**, Tennessee, from the service of the Carrier on **June 9, 1977**.

Since the agreement was not violated, **Mr. Webber** is not to be restored to the **service** of the Carrier and be **compensated** for all time lost including overtime and holidays, beginning **June 9, 1977** and continuing, as claimed for and in behalf of Mr. **Webber** by the Clerks' Organization.

FACTS OF BOARD: This dispute, submitted to the Board by the Carrier, involves the dismissal of **3. N. Webber**, Operator, regularly assigned to the operator's position at Carrier's Yard, **Knoxville**, Tennessee, hours **3:00 p.m.** to 11:00 p.m.

On **June 9, 1977**, Carrier's Assistant Superintendent wrote **Mr. Webber** and dismissed him from the service of the Carrier for **dereliction** for his failure to comply with the instructions of the Division officer at approximately **3:20 p.m., June 8, 1977**, when **Mr. Webber** failed to report to the Call Office the call for train No. 126 to **Oakdale** at **3:00 p.m.** **Mr. Webber** requested a hearing in accordance with the provisions of the collective bargaining Agreement. The hearing was held for **July 5, 1977**, and later rescheduled for **July 11, 1977**. A transcript of the hearing has been made **a part of** the

Mr. Webber was present throughout the hearing, was represented by the Local Chairman of the Organization, and had witnesses in his behalf,

A review of the transcript of the hearing **shows** that none of **Mr. Webber's** substantive procedural rights was violated. The

hearing was thorough and was conducted in a fair and impartial manner. Following the hearing, the Superintendent wrote Mr. Webber on July 22, 1977, and affirmed his dismissal. The Organization, on July 29, 1977, initiated a claim in behalf of **Mr.** Webber for pay for all time **lost**, including overtime and holidays, until restored to service. The claim in behalf of Mr. Webber was handled in the usual **manner** on the property, declined at each level of appeal, and is properly before the Board for adjudication.

There was substantial evidence presented at the investigation to support the Carrier's action. Claimant was clearly guilty of insubordination in refusing to comply with instructions of the Terminal **Trainmaster** to relay to the Call Office the call for train No. 126 to **Oakdale** for **5:30** p.m. on June 8, 1977. The contention that Mr. Webber was busy with train orders **at the** time of his refusal to comply with the instructions of the **Trainmaster** is not persuasive. The record establishes that the Trainmaster did not issue the instructions to **Mr.** Webber while the latter was preparing train orders, but waited until Mr. Webber was finished with the train orders and called him back to issue the instructions which Mr. Webber refused to carry out. The record also establishes that it was an established procedure for the Terminal **Trainmaster** to instruct the operator to relay to the Call Office calls for trains.

It is well settled in the railroad industry that **employees** must comply with instructions from their superior officers and then complain later if they think that they have been mistreated, except where a real safety hazard may be involved. There is no safety hazard involved **in** our present dispute. Whether Mr. Webber believed that the work involved could properly be assigned to him is not controlling. It was his duty to comply with the *instructions and* thereafter seek a remedy through proper grievance channels for *whatever* rights he felt were violated.

The Board's attention has also been called to Mr. Webber's past record over the three and one-half year period prior to the incident involved herein, which record was far from satisfactory.

There is no proper basis for the Board **to** interfere with the action of the Carrier. The claim of the Carrier will be sustained.

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

The dismissal of **Mr.** J. N. Webber upheld.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.