

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23829
Docket Number SG-23972

Paul C. Carter, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen
 { Alton and Southern Railway Company

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Alton and Southern Railway Company:

On behalf of Signalman M. R. Peyla for reinstatement to service and payment for all time lost since October 1, 1979."

OPINION OF BOARD: The Claimant, a signalman, had been in Carrier's service about eleven years, and at the time of the occurrence giving rise to the claim herein, was working in a signal construction gang. The gang was engaged in the installation of a car retarder.

The record shows that the Carrier had scheduled overtime work for the gang on Saturday, September 29, 1979. The Supervisor instructed the foreman about 1:00 P.M., Friday, September 28, that the gang would be required to work at 7:00 A.M. on Saturday, September 29. About 3:45 P.M. the Foreman advised the Supervisor that only one man had agreed to work. The Supervisor then contacted the men individually and all agreed to work except the Claimant and another signalman. The Supervisor told the other signalman that if he had good reasons why he could not work, to report to the office and explain them. He told the Foreman to inform the Claimant to come to the office and tell him (the Supervisor) if he had good reasons that he could not report. The Claimant and the other signalman reported to the Supervisor's office. The other signalman agreed to work. The Claimant informed the Supervisor that he would not report for duty on Saturday, and did not report. When he reported on the following Monday, he was relieved from duty pending formal investigation. On October 1, 1979, Claimant was notified to report "... October 3, 1979, for formal investigation to develop the facts and place your responsibility, if any, in connection with your failure to comply with instructions issued to you by Supervisor Signal & Communication R. L. Tweedy on Friday, September 28, 1979."

The Carrier states that the investigation was scheduled for October 3, 1979, in compliance with that part of Rule 701 of the applicable Agreement reading:

"... In cases involving suspension, the investigation will be held within three (3) working days of the date charges are made."

The investigation was conducted on October 3, 1979, as scheduled. Claimant was present throughout the investigation and was represented by the General Chairman and the Local Chairman of the Organization. Some complaint was made by the representatives of the Organization as to the manner in which the

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investigation was conducted and during the course of appeal alleged that the transcript was not accurate.

We have carefully examined the transcript of the investigation and find no serious irregularities in the manner in which it was conducted. The conducting officer was attempting to confine the investigation and the questioning to the charge involved. No proof was offered of any inaccuracies in the transcript.

As to the facts in the case, we think that the statement of the Claimant in the investigation is of primary importance. He testified in part:

"... I asked him (the Supervisor) if he was telling me that I had to be here tomorrow. He said 'yes, you have to be here.' I said that it was my day off and I didn't think that I had to work on my day off and that I wasn't. He said 'yes, you will.' I said 'bull shit'. He said 'You will be subject to disciplinary action.' I said, 'well, we will have to see.' I stood there for a minute - nothing was said, I left the room."

Other witnesses testified that they heard Claimant tell the Supervisor that he would not work on his rest day. The Claimant gave the Supervisor no reason for not working on his rest day. The Signal Foreman also testified that Claimant never gave him a reason why he did not want to work.

The Supervisor was asked by Claimant's representative if he asked Claimant what his reason was for not working and the Supervisor replied:

"He did not give me the opportunity to inquire but made a statement that you are not going to tell me that I am going to work on my rest days."

Another signalman testified:

"Q. Would you give a statement of the facts concerning the incident under investigation.

A. At approx. 3:45 p.m. Mr. Peyla came into the signal office and asked Mr. Tweedy if he had to work on his off day. Mr. Tweedy said 'yes' and Mr. Peyla said, 'I do not have to work on my day off, and you cannot tell me that I have to work on my day off.' Mr. Peyla walked out the door and that was the end of the conversation."

(From statement of Signalman G. Niemeyer).

In the investigation Claimant did indicate that he had things to do on the Saturday involved "personal reasons" and one of these was to "take my month old baby to the doctor for a monthly check up, she was a month old that day, and she had a rash all over her head and she had something wrong with her eyes. That was my reason for not wanting to work." The record does not indicate that the Claimant gave such reason to the Foreman or to the Supervisor.

The carrier has a right to direct its work force. **Employees** are expected to comply with the instructions of their Supervisors, except where a proven safety **hazard** may be involved. It **was** Claimant's obligation to **comply** with the instructions of his Supervisor and then **handle** through the grievance procedure if he considered that his agreement rights were violated or that he **was mistreated**. The rule has been briefly stated many times "Comply and then complain".

Based upon the evidence **in** the investigation, we find that Carrier's dismissal of **Claimant** for violation of **Uniform** Code of Safety Rules, General Rule **N**, Part **3** - Insubordinate, was not arbitrary, capricious or **in** bed faith.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.