

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23985
Docket Number MW-24061

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes
{ Consolidated Rail Corporation

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

(1) The dismissal of Machine Operator Allen R. Hargrove for alleged insubordination was without just and sufficient cause and wholly disproportionate to the charge (System Docket 484).

(2) Machine Operator Allen R. Hargrove shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant, Allen R. Hargrove, entered the service of the Carrier on August 30, 1976 as a Trackman. On May 16, 1979 Claimant held a position as a Machine Operator at Ashtabula Harbor Yard, Ashtabula, Ohio. He was working under the supervision of Foreman J. A. Schauer and Assistant Supervisor R. J. Rumsey when the incident here occurred.

At approximately 8:10 A.M., on May 16, 1979, Claimant Hargrove was informed by Foreman Schauer that he had been displaced by C. J. Nitz, an auto-spiker operator, and to let Mr. Nitz replace him on the machine. The Claimant refused to follow Foreman Schauer's instructions.

At approximately 3:05 P.M. on May 16, 1979, R. J. Rumsey, Assistant Supervisor-Track, informed the Claimant that in order to work the next day he would have to make a bump before the starting time (7:00) A.M. By 7:00 A.M. on May 17, 1979 the Claimant had not made a bump and he was informed by Foreman Schauer that Claimant would not be permitted to work until he did so. The Claimant went to the work site and at approximately 10:00 A.M., Mr. Rumsey removed him from the position with instructions to make a bump. The Claimant did not make a bump.

Under the date of May 30, 1979, the Claimant was given a notice to attend a trial on June 6, 1979 to answer charges in connection with the following:

"(1) Failure to follow orders of Foreman J. Schauer on May 16, 1979 at approximately 8:10 AM, at the Ashtabula Harbor Yard, and on May 17, 1979 at approximately 7:00 AM, at Ashtabula, Ohio Camp Cars.

(2) Failure to follow orders of Assistant Track Supervisor R. J. Rumsey on May 16, 1979 at approximately 3:05 PM, at Ashtabula Harbor Yard."

Subsequent to the trial the Claimant was notified, dated June 8, 1979, that he was "Dismissed in all capacities". The appeal of Claimant Hargrove was handled up to and including the Senior Director-Labor Relations. The Senior Director denied Claimant's appeal in a letter dated November 29, 1979. The Carrier contends that the Claimant admits he failed to follow orders given to him. Claimant Hargrove testified as follows:

"Q: At 8:10 AM on May 16 when Mr. Schauer told you that you were bumped by Mr. Nitz and to get off of the spiker to let Mr. Nitz run the machine, did you get off the spiker?

A: I did not, and I explained to him why.

Q: Mr. Hargrove on May 17 at approximately 7:00 AM, did you follow the orders of J. Schauer and make a bump.

A: I did not because I explained to you why I didn't.

Q: Mr. Hargrove, did you follow Mr. Rumsey's order to make a bump prior to starting time on May 17?

A: No I did not."

The Carrier maintains that the Carrier is not required to prove that which has been admitted by an employee charged with an offense (First Division Award Nos. 4848, 8275, 16712; Third Division Award Nos. 7042, 8311 and 9033). Further, the testimony of Messrs. Rumsey, Schauer and Hale corroborates the fact that Claimant failed to follow orders given to him by his supervisors.

The Carrier maintains that the Claimant had an obligation to obey instructions given to him and if he felt aggrieved, to progress his grievance through the channels provided. Further, the Claimant had no sufficient reason to believe that such instructions involved unusual hazard, substantial injury to his health or abnormally dangerous conditions for work.

The Carrier maintains that failing to follow orders justifies dismissal (First Division Award No. 16596, Second Division Award Nos. 4672 and 4782; Third Division Award No. 16074).

The Claimant maintains that he did not follow the instructions given to him on May 16, 1979 because of Claimant's misunderstanding and/or misinterpretation of the rules. The Claimant testified that he did not relinquish his position as operator of the spiking machine because he was not displaced prior to the beginning of his work period (7:00 A.M.) that day.

Foreman Schauer testified as follows:

"Q: Did Mr. Hargrove explain to you why he was refusing to be bumped by Mr. Nitz?

A: Mr. Hargrove stated that it was an illegal bump and I informed him that it was a legal bump as was explained to me by you later, Mr. Wheeler."

Claimant contends that he was permitted to work his assigned position on May 16, 1979 regardless of his displacement by Nitz. The Claimant, therefore, understood no need for him to displace a junior employe in accordance with the instructions of Foreman Schauer and Assistant Supervisor Rumsey.

Claimant maintains that the decision of dismissal under the circumstances involved here was exceedingly harsh and disproportionate to the charge (Second Division Award No. 7040; Third Division Award Nos. 10878 and 21832). The Claimant further maintains that when discipline is excessive, capricious, improper and unwarranted it cannot stand. (Award Nos. 2813, 6074, 10582, 11556, 14120, 14339, 14479 and 16166).

The Board has long held that refusal to obey a direct order is grounds for discipline including possible dismissal. (The award precedents on this point clearly support the principle that an employe should "work (obey) now and grieve later.") In the instant matter Claimant violated this principle. X-6

Claimant further exacerbated the matter by refusing to bump on the second day. The Board is of the opinion that even an employe's misunderstanding of rule which leads him to disobey an order is not a sufficient reason to immunize an employe from discipline. Under the circumstances, the charge was supported by substantial evidence on the record. Therefore the Board concludes that the discipline assessed was not premised on caprice or unreasonableness. Accordingly, the Board denies the claim.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

Award Number 23985
Docket Number MW-24061

Page 4

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 27th day of August 1982.

