

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23986
Docket Number MW-24069

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employes
(Southern Pacific Transportation Company
((Texas and Louisiana Lines)

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

(1) The dismissal of Machine Operator R. E. Eriscoe for violation of 'Rule 801' was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File MW-80-111/285-85-A)

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

OPINION OF BOARD: Claimant R. E. Briscoe, was initially employed April 20, 1979 as a machine operator. In a letter dated May 2, 1980 the Claimant was told that he was dismissed from the service of the 'Carrier for failure to follow the instructions of General Foreman J. C. Veretto and his foreman in violation of Rule 801.

In a letter dated May 13, 1980, Claimant was granted a hearing on May 27, 1980. Subsequent to the hearing the Claimant was notified by letter dated May 29, 1980 that his appeal was denied.

Carrier contends that Claimant Briscoe refused to follow the instructions of his foreman and when General Foreman J. C. Veretto told Claimant to do as his foreman instructed, Claimant still refused to carry out his foreman's instructions. Claimant Briscoe was instructed to get a maul to drive a tie under the rail instead of the pick he was using because the pick was unsatisfactory and unsafe for that particular job.

Claimant Briscoe testified as follows:

"Q: Were you told by your foreman to get a hammer or a maul to drive a tie under the rail?

A: Yes sir.

Q: Were you using a pick?"

A: Yes sir.

"Q: Did you stop using the pick and go on and get a **maul** to drive the tie under the rail?

A: No **sir**.

Q: Did Mr. Veretto then tell you to get a maul?

A: Yes sir.

Q: Did you go get a maul. after Mr. Veretto told you to?

A: NO sir.

Q: **How** many times **did** Mr. Veretto tell you go get a maul?

A: once.

Q: Was there a maul available for you to go and get?

A: There was one **further down** the track.

Q: Was there any reason why **you couldn't** go **and get** the **maul** as you had been instructed?

A: No . "

General Foreman Veretto testified that Claimant was instructed not to use a pick because it was unsafe and that Claimant was told such.

Carrier maintains that if Claimant Briscoe felt that he was being "hassled", his remedy lay **in** the grievance machinery of the current agreement by **complying** with instructions given and then filing a claim or grievance (Third Division Awards **12985, 10107** and **16286**; Second Division Awards **1542, 6050** and **4782**).

Carrier further maintains that the severity of the discipline was justified in light of the Claimant's previous record. The Claimant was suspended from service of the Company without pay, February 14, **1980** for violation **of Rule 301 - Falsification** of Time Roll.

Claimant **maintains** that he did not refuse to comply with his supervisor's instructions. Instead, Claimant failed to act upon the instructions given him by General Foreman Veretto because he (Claimant) was in the process of performing the work with the aid of a pick and **because** he was convinced that doing so was the quickest method to perform the task. The Claimant notes that he was **assisting** on the Hydra-Spiker at the **time** of the incident and that no one **had** instructed him to do this. **He** did this to help catch up on the work.

Claimant further maintains that an unprovoked verbal abuse by General Foreman Veretto had an adverse effect on his attitude toward his supervisor. The Claimant testified as follows:

"Q: Why didn't you go get the maul?

A: Because Mr. Veretto started hollering and screaming at me.

Claimant Briscoe further testified:

Q: How many times did Mr. Veretto tell you to go get the maul before he started yelling and screaming at you?

A: Once.

Q: Did Mr. Veretto curse at you?

A: Yes.

General Foreman Veretto did not deny that he used abusive language in his testimony.

Claimant maintains that while he may have exercised poor judgement, the dismissal under the circumstances involved here was wholly disproportionate to the offense. (Awards 6638, 10790 and 11622). Further, dismissal was exceedingly harsh given the testimony of General Foreman Veretto that the Claimant was a good worker and a good employee.

The Board has carefully considered the record in this matter. The Board concludes that by Claimant's own admission he failed to obey the orders of his foreman. Awards from all Divisions clearly support the proposition that insubordination is a serious infraction. The Board has held that employees, as a rule, should "work (obey) now and grieve later." Claimant failed to abide by this principle. Consequently, 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 Employee involved in this dispute are respectively Carrier and Employee 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting ~~Executive~~ Secretary
National Railroad ~~Adjustment~~ Board

B y *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August 1982.

