

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25673
Docket Number SG-25971

John W. Gaines, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the St. Louis-Southwestern Railway Company:

Claim account of violation of Rule 700 of the current Signalmen's Agreement , as amended, when Carrier dismissed Mr. H. L. Reed, Signal Foreman on January 6, 1984, for alleged insubordination. (Carrier file 91-72)

OPINION OF BOARD: After a due hearing Claimant, a Signal Foreman, was terminated from service for one incident of insubordination to his Signal Supervisor occurring on Friday, January 6, 1984. Claimant's far from exemplary service record was in a shape at that point already making it incumbent on him to improve on his pattern of behavior in respecting the company rules.

On date of the incident as just noted, Claimant had use of a Carrier gang truck out on the job. His Supervisor's repeated instructions to bring back the truck before the 4:00 P.M. quitting time set the scene for their first argument of that Friday. Claimant argued, persistently, that demands of the task before him out on the job would take up what available time he had and needed before quitting for the day.

Claimant pointed out in his testimony that he had informed the Supervisor several months earlier about the changing of tires on the truck and, finally on or about January 3, 1984, the Supervisor responded that Claimant would be told to bring in the truck on January 6 if the necessary purchase order materialized for the replacement truck tires.

The Transcript contains conflicting testimony as to whether, on January 6, Claimant so arrived in the truck as to report to the Supervisor's office a minute after 4:00 P.M. or, as a technicality, some minutes before. A second argument that day was brought on with the Supervisor's instruction given about 4:00 P.M. for Claimant to make a twenty minute ride in the truck into the next town in order **for** him to put it in the tire shop for a needed tire change. The instruction had been preceded by the Supervisor twice soliciting some explanation **for** the tardiness. and thereupon raising the prospects of taking Claimant out of service or, if otherwise, then not authorizing any overtime pay for claimant if he went ahead as he was being instructed to do in connection with delivering the truck.

Claimant contended to the contrary that the Agreement provided for overtime pay for any work done following his 40 hour week just completed and argued, in regard to himself, that he would not take the truck to have the tires put on and, in regard to the Supervisor, that the latter ought to read the Agreement. The Supervisor countered that, for overtime eligibility, a Foreman qualified under monthly hours, not weekly hours limited to 40 each week and that, under the Supervisor's authority, Claimant was verbally out of service for insubordination.

The basis assigned for both the suspension from service and the subsequent termination was the single incident of refusal to drive the company truck over to have tires replaced. Once immediately, and once subsequently thereto relative to when he was thus taken out of service, Claimant sought to make full amends with the Supervisor in relieving the difficulty, but to no avail. Actually, bringing the truck back reasonably early in the afternoon would have made amends unnecessary because there would have been no difficulty in the first place; Claimant suffers here, much from the results of his own action, i.e., the full discretion and control to return the truck early while still on duty reposed solely in Claimant.

Arguing about a superior's instruction to do something, and **straight-**way refusing to do it can make for a serious problem and consequences; and in expressing to his Supervisor his argument and his consequent refusal here, Claimant appears to have affected a very loud and resoundingly overheard delivery in doing so. Such an incident so embellished as at present erodes and undermines authority. We find discipline to be warranted for Claimant's overt insubordination, irrespective of whether he was right or wrong about when a Foreman is considered on overtime. What his reasoning was does not excuse his resulting behavior. The well established and orderly grievance procedure under the Agreement would have ironed out the matter in regular course and, in actuality, the Agreement supported the Supervisor in that the truck delivery errand, if made after quitting time by Claimant on Friday afternoon as ordered, would not have been considered overtime.

But it is severe, the permanent termination under the circumstances of the present rules' violations, and we find the disciplinary action to be excessive.

We will award that Claimant be returned to service with full seniority rights and benefits unimpaired, but without pay for time lost.

As indicated at outset, Claimant is no stranger to falling subject to disciplinary and other action. Twice he has received disciplinary demerits for rules violations. Four letters of reprimand which Claimant has accumulated were concerned respectively with absenteeism without authority, with his attitude, with insubordination, and with private use of a Carrier vehicle. The present discipline, despite its being reduced to the stiffness of loss of pay, is cumulative to the rest of Claimant's infractions which, in the aggregate, stand as strong reason to expect of him a better attitude henceforth and a marked improvement in his service record.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy T. Bever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.