

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26112
Docket Number MS-26470

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Donald M. Wylie
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Donald M. Wylie, petitioner, claims that he was wrongfully discharged from employment as a trackman for the Carrier, for his alleged unjustified failure to obey an order of his superior to engage in overtime snow removal from station platforms, on December 6th, 1983. Petitioner claims that his explanation of his physical condition at the time, the then wet garments available for his use, and the apparent misunderstanding of his immediate supervisor as to the extent of the snow removal operation, clearly excused his engaging in the requested platform snow removal."

OPINION OF BOARD: Claimant was employed with the Carrier as a trackman on the Carrier's Mayfair Section Crew. Claimant's tour of duty on the date involved was from 7:00 A.M. to 3:30 P.M. Claimant was covered by the Agreement between the Carrier and the Brotherhood of Maintenance of Way Employees.

According to the Carrier, on December 6, 1983, shortly after 3:00 P.M., Carrier's Roadmaster, Suburban Division, D. A. Schipper instructed Assistant Foreman in charge of the Carrier's Mayfair Section Crew, T. Sanchez, to take his crew and clean the recently fallen snow from the Carrier's Irving Park station. Sanchez instructed Claimant to help clean the platform. Claimant refused to perform the work stating that his clothes were wet. Carrier's Manager of Maintenance Operations, A. D. Miller, also instructed Claimant to perform the work as assigned and stated that the work was of an emergency nature and that it should not take all night. Claimant again refused. Miller reminded Claimant that he was paid an allowance for wet weather gear. Claimant stated that he knew that but that his rain suit was stolen.

Claimant acknowledges that he refused the work order that was described being of an emergency nature. Claimant states that aside from the wet clothes, he had no type of body control or circulation and that he felt that working under such conditions was unsafe.

The Carrier asserts that Claimant refused to perform work as instructed and there was no legitimate basis for such a refusal thereby justifying the termination and that such action was neither arbitrary nor unreasonable, especially in light of Claimant's employment record that shows seven previous assessments of discipline.

Claimant asserts that the discharge was without basis due to his physical condition, the wet clothes and an apparent misunderstanding as to the amount of work to be performed.

After a close examination of the record, we are of the opinion that there is substantial and credible evidence in the record to support the termination decision made by the Carrier in this case. Claimant clearly and repeatedly refused to perform the work as instructed. We are not satisfied that there is sufficient evidence in the record to find that Claimant was asked to perform work under unsafe conditions.

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:


Nancy J. Dever Executive Secretary

Dated at Chicago, Illinois this 19th day of September 1986.

