

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
ATLANTA, BIRMINGHAM AND COAST RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood—

(a) That W. W. Lashley, Extra Gang Foreman, Bellwood, Georgia, was unjustly dismissed from the service; and

(b) That W. W. Lashley be reinstated with seniority unimpaired and paid for all time lost from the date of his dismissal, January 18, 1943, until he is returned to service.

OPINION OF BOARD: Claimant was foreman in charge of an extra gang. Under date of January 16, 1943, the Roadmaster instructed him to load a carload of rail at Langdon Spur and haul it to Gay for loading. The Roadmaster's orders contained the following:

"This rail should be hauled up and stacked ready for loading Monday (January 18th), whether or not the cars have been placed."

Claimant did not carry out the Roadmaster's orders. It was raining on Monday the 18th and his gang did no work at all. He was dismissed from service after a hearing which he and his representatives attested "has been held in a fair manner."

In their original submission—indeed, throughout the record, the employes' contention is predicated on the assumption that the men in claimant's gang refused to work because it was raining. We can find nothing in his testimony at the hearing to support the assumption. On the contrary it appears from his testimony that he did not call upon his men to work on the 18th because he thought it was raining too hard.

In argument it is sought to justify his conduct because there did not appear to be an emergency in getting the rails moved from Langdon Spur and stacked for loading at Gay; and because the carrier was accustomed to lay gangs off when it is raining; and because the regular section gang did not work outside that day because of the rain; and because the orders were not specific. That the orders were not susceptible of misunderstanding is apparent from the sentence we have quoted. All the other reasons attempting to justify claimant's conduct are beside the issue. He took upon himself the responsibility of disregarding the orders of his superior and thereby subjected himself to disciplinary action by the carrier.

Dismissal is, of course, the extreme penalty. But it cannot be said to be arbitrary or capricious in this instance. It seems to us that the paramount essential in the operation of railroads is that subordinates obey the orders of their superiors. What was said in Award No. 2216 may well be repeated here:

"We cannot reinstate the claimant without too far weakening the power to enforce its instructions, which properly reside in the carrier. Certainly we cannot do so, merely because we may believe that the action taken was, in the circumstances, too severe."

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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of April, 1944.