

Award No. 9866
Docket No. CL-11942

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ILLINOIS CENTRAL RAILROAD COMPANY

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

1. The Carrier violated the Clerks' Agreement at New Orleans, Louisiana, when on March 4, 1958, it dismissed Freight House Laborer, Ellis F. Hull, from the service following formal investigation conducted on February 26, 1958, on the premise that said Ellis F. Hull acted in an insubordinate manner by failing to comply with alleged instructions issued by a Foreman in charge of Warehouse 9, about 2:00 P. M., on Wednesday, February 19, 1958, and

2. That the Carrier be required to restore said Ellis F. Hull to the service with his seniority and other privileges unimpaired.

OPINION OF BOARD: This dispute concerns the dismissal of Claimant, a laborer at Carrier's New Orleans Freight House, for allegedly acting in an insubordinate manner on February 19, 1958. On that date, Claimant was on a 10:00 A. M. to 7:00 P. M. assignment and at 2:00 P. M., after he had been working four hours, asked his Foremen if "it was all right to go to dinner". When the latter replied that he would have to wait until 4:00 P. M. for his meal period, Claimant asked why and was told by his Foreman that he had no explanation to offer and he should return to work. Claimant instead stated "I don't have to go to dinner at 4:00 o'clock and I am not going to do it." He thereupon was told by the Foreman to see the Agent in charge of the operation but instead first discussed the matter with the Acting General Foreman and again with his own Foreman. He then reported to the Agent who suspended him; thereafter, following an investigation, Claimant was dismissed.

There is no doubt but that Claimant refused to follow his Foreman's orders. It is equally clear, as this Referee has had prior occasion to point out, that insubordination is a serious offense and employees must obey the

reasonable instructions of their supervisors and resort to the applicable grievance machinery if they feel aggrieved. See, e.g., Awards 8711 and 8712.

On the other hand, it is incumbent upon supervisors to act in a prudent manner and not to issue to their subordinates arbitrary instructions that may unduly tend to provoke them. When, as in this case, the meal period of a laborer engaged in physical work for four hours is delayed an additional two hours it is only reasonable supervisory practice to furnish some sort of explanation to the employe for that unusual action. The Foreman's failure to do so constitutes an abuse of sound discretion and considering his occupation and the setting, subjected Claimant to undue provocation. All factors considered, we cannot regard as unreasonable Claimant's refusal to wait for his meal period until the seventh hour after he started work, particularly when no reasons for that delay were brought to his attention. The mere fact that another laborer under like conditions elected to comply with the instructions does not alter or detract from our conclusion.

In view of the foregoing, the claim will be sustained.

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 Employe involved in this dispute are respectively Carrier and Employe 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March, 1961.