

Award No. 10692

Docket No. CL-9982

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of Terminal Board of Adjustment of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

Henry F. Peterson, Ticket Seller St. Louis Union Station, be reimbursed for wage losses suffered during the five working days in the period from March 16, 1957 to March 22, 1957, both dates inclusive, account of unjustified suspension from duty.

OPINION OF BOARD: This is a discipline case involving Henry F. Peterson Ticket Seller Union Station, St. Louis, Missouri. With a seniority date of July 23, 1942, Claimant had almost fifteen (15) years of service at the time of this dispute, and there is no showing in the record of any prior violation of the rules.

On Friday, March 15, 1957, the Claimant was working on the first shift, his hours of assignment were 8:00 A. M. to 4:45 P. M. with 45 minutes for lunch. While the bulletined hours of Claimant's assignment were from 8:00 A. M. to 4:45 P. M. the record clearly shows that it was the established practice for many years that Ticket Sellers at the Union Station, St. Louis, are allowed forty-five minutes in which to complete their Ticket Sales Report — all necessary time beyond this is considered overtime. March 15 and 16th were what is known as a double day, that is, ticket sellers do not balance their accounts on the first of such double days. It has always been the practice for ticket sellers to leave the office immediately following their being relieved at the ticket window on the first of double-days, and in such instances they do not put in overtime slips on the second double day for the first hour and a-half they work on their reports.

At about 3:50 P. M. on March 15, 1957, Mr. Donnelly the General Passenger and Ticket Agent, under who Mr. Peterson worked, told Chief Klose to tell Claimant that he, Mr. Donnelly, wanted him to remain at his window.

We turn to the record for the exact words used:

“Questions by Mr. Fitzjarrel

Answers by Mr. Klose

Q — I would like to question Mr. Klose. You stated you requested Mr. Peterson to work overtime — you didn't tell him he had to stay, is that correct?

A — I requested him to stay on the window.

Q — Do you recall the nature of the words you used?

A — I said, Mr. Donnelly would like for him to stay open.

Q — Do you recall what he replied to you?

A — He said he couldn't stay open, that he had an engagement.

Questions by Mr. Fitzjarrel — continued.
Answers by Mr. Klose

Q — At this time did you protest his statement?

A — No sir.

Q — You had no more conversation?

A — I went back and told Mr. Donnelly that Mr. Peterson wouldn't open up."

The following is from the testimony of Mr. Peterson the Claimant, taken from the Record.

"Questions by Mr. Fitzjarrel.
Answers by Mr. Peterson.

Q — Mr. Peterson, have you anything to say?

A — I think that I am right and didn't do anything wrong. I thought I was within my legal rights to refuse to work. If Klose had told me it was absolutely necessary, I would have stayed.

Q — Did you decline Mr. Klose's request to remain open?

A — Roy came up and said Donnelly wants you to work. I told him I can't I have to pick up a tire and if I don't pick it up today I would have to wait until Monday. There was no more said. I put my cash drawer away and there was no dispute or argument."

When Claimant told Chief Clerk Klose that he could not stay because he had to pick up a tire before the store closed Klose said nothing but returned to tell Donnelly that Claimant "couldn't stay open, that he (Peterson) had an engagement".

On the same day, March 15, 1957, General Passenger and Ticket Agent Donnelly addressed a letter to Claimant notifying him that he was suspended effective at once, charged with insubordination. He was also notified that an investigation of the charges would be held March 20, 1957. The investigation was held on that day. On March 22, 1957, Claimant was informed by letter that he had been found guilty of the charges, and was suspended from the service of Carrier for five days.

On April 3, 1957, Local Chairman appealed the decision which was denied on the property and on October 24, 1957, the Organization gave notice of appeal to this Board.

The charge is insubordination, not that he violated the established hours of service of this position, for the hours of service observed by Claimant on the involved date, were the recognized hours established by practice. The record clearly shows this, and further confirmation is contained in the notice issued by Mr. Donnelly dated March 15, 1957 setting forth the hours that Ticket Sellers are to work.

The Claimant was not required to work beyond his recognized quitting time 4:00 P. M., he stayed on the job until he was relieved. The request made upon him was a simple statement that "Mr. Donnelly would like for him to stay open" Claimant replied "I told him I can't I have to pick up a tire".

Claimant testified "If Klose had told me it was absolutely necessary, I would have stayed". Did this Claimant violate any rule? We fail to find that he did and in the absence of such a showing by the Carrier, we hold that the Carrier act in an arbitrary manner and the discipline is unwarranted.

The claim must be sustained.

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 imposed was arbitrary and without just cause.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1962.

DISSENT TO AWARD 10692, DOCKET CL-9982

The award in this docket is in error in that it would establish a novel basis upon which an employee is required to obey the lawful instructions of his superior.

The Claimant, a ticket seller, was informed by the Chief Clerk that the General Passenger and Ticket Agent wanted him to remain at his window to take care of a line of customers. The Claimant replied that he had some personal matter to take care of and that he couldn't stay at his window. The Claimant's only defense offered at the hearing was "If Klose (Chief Clerk) had told me it was absolutely necessary, I would have stayed."

By sustaining the claim in this case, the Referee is holding that direct orders from a superior are the only ones which must be obeyed and that an employee can, with impunity, ignore instructions issued on a

pleasant and informal basis. The dangers of such an award as this are patent.

/s/ D. S. Dugan
/s/ P. C. Carter
/s/ R. A. Carroll
/s/ W. H. Castle
/s/ T. F. Strunck

**LABOR MEMBER'S ANSWER TO CARRIER MEMBERS'
DISSENT TO AWARD 10692, DOCKET CL-9982**

A review of the "Dissent" will show that it is based on the false premise that a "request" is the equivalent to an order or "instruction" to perform work on an overtime basis, consequently, when an employe declines the request to work he is guilty of insubordination. That there is no merit to such a contention is clearly apparent.

We need go no further than a dictionary to determine the clear distinction between a "request" and an "instruction". The American College Dictionary defines these words, as follows:

"re-quest. * * * 1. Act of asking for something to be given, or done, esp. as a favor or courtesy, * * *."

"instruct * * * 1. to direct or command; furnish with orders or directions; * * *."

The record shows that Claimant was charged with insubordination when he declined Carrier's request to work overtime on the date in dispute. The Board properly held that Claimant was not guilty of insubordination because he declined Carrier's request to work overtime.

Regardless of the Dissenters' contentions, an employe is not guilty of insubordination, unless it is conclusively shown that he refused to carry out direct orders or instructions of a superior. That was not the case here, as Claimant did not disobey an order, or disregard instructions to work overtime.

It should also be noted that Claimant did not "ignore" the Carrier's request, in fact, he specifically stated his reasons for not wanting to work overtime on that particular date. He was not thereafter instructed, either in "a pleasant and informal basis", or otherwise, to work overtime.

The burden was upon the Carrier to prove its charge of insubordination against the Claimant. This it failed to do, as the element of disobedience of an order was lacking. The Dissenters cannot supply that defect in the Carrier's case by a "Dissent", nor, can they change a "request" into an order or instruction, regardless of the manner in which it was conveyed. The only thing "novel" about this case is the Dissenters attempt to give the same meaning to the words "request" and "instruct".

The Award properly disposes of the dispute in accordance with the pertinent facts of record and governing rules.

/s/ J. B. Haines
J. B. Haines
Labor Member