

Award No. 11447
Docket No. TE-10059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad that:

1. Carrier improperly and unjustly suspended E. L. Holmes from work December 28, 1956 through January 11, 1957.
2. Carrier be required to compensate E. L. Holmes in the amount of \$240.37 for time lost because of this improper suspension.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

At the time cause for this claim arose, E. L. Holmes was the regularly assigned occupant of the third shift operator position at Baldwin, Florida; assigned hours 11:00 P. M. to 7:00 A. M., a seven day position with assigned rest days of Wednesday and Thursday each week. Baldwin is located on the North Florida Division, of this Carrier, approximately eighteen miles south of Jacksonville, Florida where the Division Headquarters are located.

On December 24, 1956, Monday, Chief Dispatcher W. W. Walker sent the following telegram to Holmes:

"Report to my office 10:00 A. M. December 26, acknowledge. File W-886."

On December 25, 1956, Holmes replied by telegram as follows:

"Your W-886 December 24, I have previous engagements and obligations for my relief days. Please advise circumstances necessitating my reporting to your office and if this cannot be handled through correspondence."

On the same date Chief Dispatcher Walker replied:

"Your wire date. You will now report to Trainmaster Mott's office 10:00 A. M. December 28, acknowledge. W-925."

operation. Most employes accept their responsibilities, but when laxness and indifference manifest themselves, discipline must sometimes be imposed to secure the necessary personal service required. If this were not so, chaos and confusion would soon hinder efficient and safe operation. It is for these reasons that this Board would hesitate to interfere with the action of the Carrier in cases such as we have before us."

Carrier affirmatively asserts that all data used herein has been discussed with or is well known by the General Chairman of the petitioning organization.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was disciplined for insubordination for failure to report to the Chief Dispatcher's and Trainmaster's offices.

The following exchange of communications formed the basis for the disciplinary action taken:

On December 20, 1956, Chief Dispatcher Walker, located in the Division headquarters at Jacksonville, instructed Claimant by telegram:

"Report to my office at 10:00 A. M. Saturday Dec. 22nd. W-714"

At 7:10 A. M., December 22, 1956, telegraphic reply was received from Claimant at the Jacksonville office, reading:

"Your W-714 Dec 20th. I have been up since noon yesterday and I do not believe it will be safe to drive to Jacksonville this morning."

On December 24, 1956, the Chief Dispatcher again instructed Claimant by telegram:

"Report to my office 10:00 AM Dec 26. Acknowledge. W-886."

At 12:50 A. M., December 25, 1956, the following telegraphic reply was received in the Jacksonville office from Claimant:

"Your W-886 Dec 24th. I have previous engagements and obligations for my relief days. Please advise circumstances necessitating my reporting to your office and if this cannot be handled through correspondence."

At 11:59 A. M., December 25, 1956, Chief Dispatcher Walker again instructed Claimant:

"Your wire date. You will now report to Trainmaster Motts office ten am December 28th acknowledge, W-925"

At 7:05 A. M., December 27, 1956, the following telegraphic reply was received from Claimant:

"Your W-925 Dec 25th. Please advise circumstances necessitating my making special trip to Jacksonville."

When the Claimant failed to report to the Trainmaster's office as instructed, the Chief Dispatcher notified him at 3:30 P. M., December 28, 1956,

that he was out of service for failure to comply with instructions. After investigation (hearing), Claimant was suspended from service for fifteen days.

From the foregoing, it is clear that Claimant refused to comply with instructions issued by proper authority on three occasions. There can be no doubt that the undisputed facts establish insubordinate conduct on the part of this Claimant. It is true, as Petitioner emphasizes, that Claimant should not have been disciplined solely for asking to be advised of the reasons for his reporting to the Chief Dispatcher's office on his rest day and that in the interest of harmonious relations the Chief Dispatcher might well have seen fit to explain the situation. The fact that he did not do so, however, does not justify Claimant's failure to report as directed. If he believed the order was unreasonable or improper, Claimant was not left without a remedy. He should have complied and then taken remedial action under paragraph (f) of Rule 14 (Discipline):

"(f) An employe who considers himself unjustly treated shall have the same right of hearing and appeal as provided for above if written request is made to his immediate superior within thirty (30) days of the cause for complaint."

What was said in Award 8711 (Referee Weston) is particularly applicable here:

"In our view, these facts suffice to establish insubordination on the part of claimant. It is true that he was on his own time on Saturday, the day the incident occurred, and for that reason the awards cited by Carrier are not altogether pertinent (Cf. Awards 7921, 5170 and 4886). On the other hand, we subscribe to the general proposition that centralized management and a reasonably disciplined organization is particularly essential to this industry and the safe, efficient and economical operations of the railroads. We are of the opinion, therefore, that even if claimant strongly believed that the Carrier was requiring him to perform work contrary to the Agreement (and on that point there is some question because of the language of Rule 3 (n) (5), he should have reported to work as directed and sought redress under the grievance machinery of the Agreement. * * *"

The evidence of record fully supports the discipline imposed. Suspension from duty for fifteen days, in the circumstances, cannot be held to be excessive or unreasonable.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May 1963.

LABOR MEMBER'S DISSENT TO AWARD 11447
DOCKET TE-10059

I cannot agree with the majority in this case.

Granted that a Carrier has a right to require an employe to submit in person to a corrective or disciplinary inquiry, even on the employe's rest day when the circumstances plainly require it, I cannot agree that a Carrier has the right to command an employe to drive his automobile eighteen miles without rest after working a night shift or on his rest day, unless it clearly indicates the purpose of its directive to be in relation to the employe's work.

In this case the Carrier gave no reason for its ordering the claimant to appear in its offices at Jacksonville, even after an inquiry was made by the claimant. Furthermore, at the resulting disciplinary hearing, the Carrier repeatedly refused to give any reason for ordering the claimant to go to Jacksonville.

Under such circumstances I cannot agree that the Carrier's actions were in any wise proper; and I cannot agree that an employe's ignoring of clearly improper actions is insubordination. Insubordination is a deliberate refusal to obey proper directives properly made.

It follows that an essential element of insubordination was absent. The disciplinary action, therefore, was improper, and the majority erred in holding that it was supported by the evidence of record.

For these reasons, I dissent.

J. W. Whitehouse
Labor Member