

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**INTERNATIONAL UNION OF MINE, MILL AND SMELTER
WORKERS, LOCAL 937**

SAN MANUEL ARIZONA RAILROAD COMPANY

STATEMENT OF CLAIM: The Union, International Union of Mine, Mill and Smelter Workers hereby submits the following question:

Was the Company justified when they discharged employee, D. E. Valdez on December 16, 1964?

If the answer to the above question is "No," should the Company then compensate Mr. Valdez for time lost due to the Company action?

OPINION OF BOARD: Claimant's employment dates from November 10, 1958 when he was initially hired as a Laborer in the Plant Construction Division of San Manuel Copper Corporation (now Magna Copper Company, San Manuel Division). On December 10, 1958, he was transferred to the Carrier's Maintenance of Way crew as a Section Man where he remained until discharged by the Carrier on April 28, 1964 for excessive unexcused absenteeism. Claimant was thereafter rehired by Carrier as a Section Man in the Maintenance of Way Department on July 21, 1964 and continued to work in this classification until December 16, 1964, the date of discharge involved in this dispute.

The incident upon which the Claimant's discharge is predicated occurred on December 14, 1964 and the notification of such disciplinary action was transmitted to the grievant in writing at the conclusion of his work shift on December 16, 1964. The full text of the discharge slip is as follows:

"To: Mr. D. E. Valdez No. 16.

This is to advise that you have been terminated from employment, effective December 16, 1964. The reason for your termination is as follows:

'On December 14, 1964, prior to the start of the work-shift, Mr. Valdez, acting without proper authority, influenced his fellow workers to refrain from working for the entire shift; consequently, only two (2) out of the fourteen employees in the department worked the scheduled shift.

This action was in violation of the provisions of the Collective Bargaining Agreement and it caused a complete disruption of the track maintenance operation. In addition, Valdez was insubordinate when he, along with other members of the crew, laid off work in spite of the fact that Superintendent Olson had informed Valdez that he would not allow the entire crew to lay off for the shift.'"

The Claimant filed a written grievance alleging that he was unjustly discharged, which was duly processed through the grievance procedure to a hearing at which the Claimant was represented by the Union's Grievance Committee and officials of the Union. The grievance was denied on the property and thereafter referred to the National Railroad Adjustment Board for consideration and determination pursuant to Article 7-1 of the Agreement between the parties.

The Carrier is a subsidiary of Magna Copper Company which operates a large mine, mill and smelter at San Manuel Arizona. Carrier operates for the principal purpose of transporting copper anodes from the smelter to a point of junction with a major trunk line railroad for further transportation to refineries in various states.

Carrier's Maintenance of Way unit normally consists of fourteen (14) employees which is usually divided into two separate crews of seven (7) employees per crew. One crew services the Carrier's San Manuel-Hayden line, while the other crew services the parent company's mine—plant line. Each crew is supervised by a Section Foreman who is directly responsible to the Maintenance of Way Superintendent. At the time of his discharge Claimant was assigned to the crew on the San Manuel — Hayden line.

On December 14, 1964 at approximately 7:00 A. M., the Claimant advised the Section Foremen that both crews would be off work that day for the entire shift due to "Union Business." Immediately thereafter, Claimant contacted the Superintendent in the railroad depot office and again stated that the crews had to be absent from work that day in order to attend a Union meeting in Tucson, Arizona, a distance of approximately forty-five miles from San Manuel. The undisputed assertion of the Carrier is that the Superintendent informed the Claimant he would not allow the entire crew to be off but would permit one employee from each working crew to be absent during the day.

Apparently this verbal offer was rejected by the Claimant as all but two members of the crews left work to attend the meeting in Tucson, Arizona. An informal investigation by the Carrier was held during the day following the incident to determine the reasons for the unexcused absences and all employees in the Maintenance of Way unit were interviewed. Among the findings of this investigation were the following:

1. Claimant had previously contacted several of the employees and asked that they attend a special Union meeting for the purpose of discussing the union contract and outstanding grievances.
2. Several of the crew members were of the impression at the time they left work that the Superintendent had given permission to the Claimant for the entire crew to be absent during the day.

3. The meeting had not been previously scheduled by responsible officials of the Union and apparently was instigated by the Claimant.

The Union contends that the disciplinary action taken by the Carrier was not justified because of many outstanding and unresolved grievances against the Carrier which provoked the incident. The Union further asserts that the foreman in charge of the Maintenance of Way crews had approved the Claimants' request that the men be off work on December 14, 1964 for the purpose of attending a Union meeting. However, this assertion was categorically denied by the Carrier and supporting evidence was introduced sustaining the denial.

Carrier contends that the record has established insubordination on the part of the Claimant, which directly resulted in a serious work stoppage and disruption of service and that the Carrier's disciplinary action was commensurate with the wrongful conduct of Claimant.

The pertinent provisions of the controlling Agreement between the parties in this dispute are as follows:

"ARTICLE 5.

STRIKES AND LOCKOUTS

5 — 1. The union agrees that during the life of this Agreement there shall be no strikes or stoppages of work called, authorized, approved or sanctioned by the Union because of grievances and that all grievances shall be exclusively and finally disposed of as provided in Article 6, Grievances, and Article 7, Appeal to the Railroad Adjustment Board.

5 — 2. Neither an incident which leads to a grievance nor the settlement of a grievance as defined in Article 6, Grievances, or Article 7, Appeal to the Railroad Adjustment Board, shall constitute a breach of this Agreement.

5 — 3. Employees shall not cause or take part in any strike or work stoppage.

5 — 4. The Company agrees that during the life of this Agreement, there shall be no lockout of employees because of grievances and that all grievances shall be exclusively and finally disposed of as provided in Article 6, Grievances, and Article 7, Appeal to the Railroad Adjustment Board.

5 — 5. Nothing in this Agreement shall be interpreted as interfering in any way with the Company's right to extend, limit, or curtail operations, or to shut down completely when in its discretion it may deem it advisable to do so because of operating, market, or economic conditions.

5 — 6. During curtailments or stoppages of work from any cause, the Union agrees that it will not interfere with the adequate manning of pumping, power production and other operations necessary to protect the properties from damage or destruction."

Article 6 of the Agreement contains the proper procedures for handling all grievances arising under the various provisions of the Agreement.

The thrust of the Union's position is that the Claimant's conduct was excusable because of alleged abuse and provocation on the part of the Carrier. A careful analysis of the applicable provisions of Article 5 of the Agreement discloses that work stoppages under any circumstances are not to be condoned by the Union or its members and that such conduct is in violation of the Agreement between the parties. Regardless of the alleged provocation, adequate relief was available through the grievance procedures set forth in Articles 6 and 7 of the Agreement. The unauthorized work stoppage on December 14, 1964 was a specific violation of Article 5 — 3 of the Agreement between the parties which provides that "Employees shall not cause or take part in any strike or work stoppage."

The Claimant apparently organized the Union meeting held on December 14, 1964 without the knowledge or prior approval of responsible Union officials. Despite contrary instructions from the Superintendent of the Carrier, the Claimant and his co-workers participated in action violative of the Agreement between the parties when they refused to work on December 14, 1964 and attended a Union meeting during working hours in Tucson, Arizona. The Claimant's conduct during the morning of December 14, 1964 constituted an effort to incite his co-workers to join him in wrongful conduct and it is immaterial whether or not the co-workers subsequently believed they had not been influenced by the Claimant's action.

The weight of the evidence clearly shows that the Claimant was the primary instigator of the work stoppage and guilty of serious insubordination. The punishment cannot be said to arbitrary, capricious, discriminatory or unsupported by the record and in accordance with the broad latitude given Carriers by this Board, in the matter of assessing discipline, "we will not upset the punishment" decided upon by the Carrier. (See Awards 2531, 8711 and 10881.

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 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 31st day of March 1966.

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