



Award No. 18799

Docket No. MW-19105

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY**

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

(1) The dismissal of Track Laborer H. Griffin was without just and sufficient cause and was wholly disproportionate to the charge placed against him. (System File 313-207)

(2) Track Laborer H. Griffin be reinstated with seniority and all other rights unimpaired and that he be compensated for all wage loss suffered in accordance with Rule 34(d).

OPINION OF BOARD: The Claimant, Track Laborer Hilery Griffin was employed by Carrier on January 22, 1969.

On March 18, 1970 Claimant had an argument with another section laborer identified as a Mexican. The Mexican had one of his legs upon the rail and the other under the rail that Claimant was cutting. Claimant kept asking the Mexican to move from this position of danger and eventually Claimant had to use physical force to pull him out from under. The Mexican jumped up in anger.

The following morning the Mexican said that he had a knife for the Claimant. Both Claimant and Lovel Gaines, another track laborer, heard the Mexican say this. Claimant construed this as a threat and was concerned that the Mexican would cause him bodily harm. The same morning Section Foreman Ralston told Claimant and some other men to go up on the hill and spike track. According to Foreman Ralston, Claimant had always taken orders before, but on this occasion Claimant told the foreman that he did not want to go on the hill to spike. The two track laborers, Claimant and Lovel Gaines, testified that Claimant tried to explain to the Foreman about the incident that occurred with the Mexican which placed Claimant in fear of personal harm but the foreman denies that Claimant mentioned this to him.

According to Claimant, he refused Mr. Ralston's instructions only after Mr. Ralston "told me to get my goddam ass home" and that is when Claimant

said he walked out of the door toward home. While the Foreman denies that he made such a statement, the record shows that later the Foreman attempted to locate the Claimant before Claimant had left Carrier's property.

Even if all of the evidence in the case is interpreted in a light favorable to Carrier, it is still unmistakably clear that Claimant was involved in an argument with a Mexican, that the following day the Mexican made a remark to Claimant heard by a third party which a reasonable man might view as a serious threat to Claimant's safety that would justify a request on the part of Claimant to absent himself from a place of possible peril.

This Board has never required any working man needlessly to put his life in jeopardy as a condition of continuing employment and will not do so here.

Moreover, there is no suggestion in the record that Claimant had over a period of time demonstrated a rebellious attitude but on the contrary the record indicates a history of compliance with orders.

The Board has previously recognized the right of an employe to refrain from executing a task when faced with an immediate danger to himself and we here reaffirm our belief in the existence and importance of such a right.

In view of there being no solid evidence to the contrary, the Board finds that Claimant had reason to believe that his life might be in jeopardy if he carried out an instruction and that even if Claimant's conduct could be construed as a refusal to obey an instruction such refusal would be justified under such unusual circumstances.

It is apparent, after reading the transcript of the Carrier's investigation, that Carrier did not meet the burden of proving its charge and of demonstrating that its conduct and decision were not unreasonable.

In view of the foregoing, the Board holds that the dismissal of Track Laborer Hilery Griffin was without just and sufficient cause and that he must be reinstated with seniority and all other rights unimpaired as well as compensation for all wage loss suffered in accordance with Rule 34(d), subject to an appropriate reduction for any wages which Claimant actually earned in other employment.

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 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 violated.

AWARD

The claim is sustained as to reinstatement with seniority and all other rights unimpaired as well as compensation for all wage loss suffered in accordance with Rule 34 (d) but there shall be an appropriate reduction for any wages which Claimant actually earned in other employment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.