

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20769
Docket Number MW-20906

Louis Norris, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of Frog Repairer M. L. Mobbs was without just and sufficient cause and was wholly disproportionate to the charge placed against him (System File A-9472).

(2) Frog Repairer M. L. Mobbs be reinstated with seniority, vacation and all other rights unimpaired; the charge against him be stricken from his record; he be compensated for all wage loss suffered, all in accordance with Rule 1(d) of Article 4.

OPINION OF BOARD: Claimant began service with the Carrier on February 14, 1972 as a Frog Repairer, which involved welding of track switching mechanisms. When so engaged, a frog repairman's vision and hearing are obstructed by his protective welding hood and the noise of the welding torch. He is therefore dependent upon his assigned helper to provide warning and protection against approaching trains and engines. Co-employee Dickerson worked as Claimant's assigned helper from February until September, 1972, at which time an altercation took place between them. These facts are undisputed on the record.

There is some dispute, however, as to what transpired during this altercation. Claimant stated, and was corroborated by at least one other witness, that Dickerson said something about "hitting" him. To which Claimant replied "If you are going to hit me, it better be hard". Dickerson is reported to have replied "How about getting hit by a train, is that hard enough". The exact language varies as between the witnesses who testified at the investigation, but it is quite obvious on the record that the threat was there and that there was "bad blood" between the two men. In addition, on at least one occasion Dickerson was some 250 to 300 feet from Claimant while the latter was at work. Claimant construed this as further evidence that Dickerson intended him harm and refused to work with Dickerson as his helper. The testimony supports this construction, that at 300 feet the helper is not in a position to properly protect the frog repairer and is not acting as his "eyes and ears".

In the sensitive position of these two men, with Claimant's reliance on Dickerson as his "eyes and ears", the situation was fraught with peril to Claimant. He so informed Roadmaster Dobbs and refused to work with Dickerson. Upon being apprised of the situation by Dobbs, Dickerson relinquished his job as helper and voluntarily stepped down to the lower rated job of Laborer. This, in spite of the fact that by virtue of his 7½ years of service, Dickerson's seniority entitled him to the job of frog repairer's helper. Claimant was thereupon assigned another helper.

So the situation remained from September, 1972, until January 2, 1974, on which date Dickerson reappeared on the job site as Claimant's helper. Upon Claimant's adamant refusal "to work with Dickerson" he was dismissed by Roadmaster Dobbs for insubordination, pursuant to Rule 176 of the Agreement between the parties. Thereafter, an offer of reinstatement was made by the Carrier, conditioned on Dickerson acting as Claimant's helper. Claimant rejected this offer and reiterated his refusal to work with Dickerson.

Claimant's demand in this dispute is fourfold: He contends that his dismissal was without just cause and wholly disproportionate to the charge against him; he seeks reinstatement with all rights unimpaired; that the charge be stricken from his record; and that he be compensated for all wages lost.

The following principles, well established by past Awards in this and other Divisions, are pertinent to the issues here involved:

1. Absent such reasons as health or safety, an employee must comply with Management's instructions and, if the propriety of the instructions are disputed, submit his grievance thereafter.

See Award Nos. 16744 (Friedman), 16286 (Devine), 16074 (Perelson), and 20030 (Eischen).

2. This Board will not require a working man needlessly to place his life in jeopardy as a condition of continuing employment, nor require him to execute a specific assignment when faced with an immediate danger to himself.

See Award Nos. 17012 (Shugrue) First Division, 17398 (Wyckoff) First Division, 2540 (Schedler) Second Division, 5861 (Zumas) Second Division, 18799 (Hayes), 17045 (Ritter) and 20651 (Quinn).

Applying these principles to the record evidence and testimony in this case, we reach the following conclusions:

a) As of September, 1972, Claimant had just cause for his belief that working with Dickerson as his helper represented a clear and present danger to his life or limb, and justified his refusal to work with Dickerson. Such belief is supported by the quoted threatening language, by the concededly "bad blood" existing between these two men, and by Dickerson being too far removed from Claimant's job site to be his "eyes and ears" and adequately protect him from injury.

b) However, as of January, 1974, some sixteen months later, Claimant's "fear" of Dickerson becomes somewhat unrealistic and unreasonable. In fact, as indicated in the record, Claimant did not reiterate his fear of Dickerson when he told Roadmaster Dobbs on January 2, 1974, "that he would not work with Dickerson". Sixteen months time had elapsed, conditions had changed, anger and tempers had subsided. In the absence, therefore, of additional proof, concrete evidence of threat of violence, Claimant could not indefinitely maintain that he was "in fear" of Dickerson.

c) There was substantial probative evidence in the record to support Carrier's conclusion that Claimant's adamant refusal to work with Dickerson as his assigned helper was tantamount to insubordination under the circumstances prevailing as of January 2, 1974. Accordingly, in view of the foregoing, we cannot conclude that the evaluation by the Carrier of the testimony adduced at the investigation was unreasonable, arbitrary, capricious, or against the weight of the evidence. Nor will this Board in these circumstances substitute its judgment for that of the Carrier in making such evaluation of the evidence.

See Award Nos. 6387 (Lieberman) Second Division, 19487 (Brent), 17914 (Quinn) and 15574 (Ives).

We have held repeatedly in past Awards that insubordination, unwarranted and unreasonable refusal to obey proper instructions of a superior, warrant the discipline of dismissal. We so hold in this case.

See Award Nos. 18362 (Ritter), 20030 (Eischen), 20189 (Sickles), 20651 (Quinn) and 5813 (Stark) Second Division.

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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulson*
Executive Secretary

Dated at Chicago, Illinois, this 18th day of July 1975.