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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20986
Docket Number MW-21149

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Pacific Lines)

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

(1) The dismissal of B&B Welder Pedro Meza for alleged insubordination was without just and sufficient cause [System File 011-181 (M)].

(2) B&B Welder Pedro Meza be reinstated with seniority, vacation and all other rights unimpaired and that he be compensated for all wage loss suffered in compliance with the Rule 45(b).

OPINION OF BOARD: On December 21, 1973, Claimant was notified of a hearing concerning an asserted violation of Rule 801:

"Employees will not be retained in the service who are insubordinate."

Subsequent to the hearing, Claimant was dismissed from service - for refusal to accept instructions from his immediate Supervisor on December 17, 1973.

The record demonstrates that on December 17, 1973, Assistant Foreman, Comeau, and Claimant had a confrontation concerning work duties. Comeau stated that Claimant refused to perform an assignment in the manner instructed. After explanation of the reasons why it should be done in a certain way, Claimant "flatly refused to work" with the Assistant Foreman. During a further discussion that day, Claimant advised an Assistant B&B Supervisor that he couldn't take orders from an Assistant Foreman - however, he desired to discuss the matter with his "union man." On December 19, 1973, Claimant reiterated his statement, to the Supervisor, that he "couldn't take orders from the Assistant Foreman."

The record is clear to this Board that Claimant was aware that Comeau was an Assistant Foreman and that Company rules required that he take orders from a person designated as such.

Claimant testified that on December 17, he made a suggestion to Comeau regarding an alternate method of performing the task, and that Comeau gave him an option of how to do the work. Carrier witnesses deny Claimant's version. Moreover, Claimant denies that he told the Assistant Supervisor - on that date - that he would not take orders from Comeau. He concedes, however, that on the later date, he expressed that he would not follow the Assistant Foreman's orders.

Even if we were to conclude that the evidence supported only the Claimant's version of the events of December 17, 1973 (and we make no such conclusion in that regard), we would still be faced with the Claimant's admitted statement on a later date. After he was fully advised of the pertinent factors, and after he had a significant period of time to contemplate the consequences of his action; he still persisted in his adamant refusal to follow the orders of properly constituted authority. At that point, Claimant was clearly insubordinate (even without regard to his actions and statements of the previous date), and the Carrier was justified in taking action to dismiss him from service.

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;

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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.