

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22697
Docket Number MS-22343

William M. Edgett, Referee

(Paul W. Peterson

PARTIES TO DISPUTE:

(
(Missouri Pacific Railroad Company
((Former Chicago & Eastern Illinois R.R.)

STATEMENT OF CLAIM: "CLAIM #1 (Disqualification)"

(a) The Chicago & Eastern Illinois Railroad Company (hereinafter referred to as 'The Carrier' or 'C&EI'), violated the Agreement between the Carrier and the Transportation-Communications Employees Union, Rules 4, 24 and related rules, when it suspended Claimant, Paul W. Peterson, from his rightfully owned Telegrapher position at Wansford Yard Telegraph Office on December 23, 1964.

(b) The Carrier shall now be required to compensate Paul W. Peterson one day's pay (8 hours) for each and every day that he is not permitted to work his position, plus any expenses incurred, beginning December 23, 1964.

CLAIM #2 (Dismissal)

(a) The Chicago & Eastern Illinois Railroad Company (hereinafter referred to as 'The Carrier' or 'C&EI'), violated and continues to violate the Agreement between the Carrier and the Transportation-Communication Employees Union, Rules 4, 24 and related rules, when on April 15, 1965, it severely and arbitrarily disciplined claimant, Paul W. Peterson, by removing him from the service of the Carrier.

(b) The Carrier shall now be required to reinstate Claimant, Paul W. Peterson, to his former status with seniority, vacation and all other rights intact and accordingly reimburse him for all wages lost beginning April 15, 1965."

OPINION OF BOARD: This claim was decided by the Board in Award 15924 on October 31, 1967. An appeal was taken to the District Court of The United States for the Eastern District of Illinois. This Award follows proceedings at the Board taken at the direction of the Court. Both parties were ably represented at the hearing.

Claimant Peterson was dismissed from service with the former Chicago and Eastern Illinois Railroad Company after Carrier found him in violation of the Rules. He was found to be guilty of insubordination for his refusal to report for service after direct instructions from Carrier to do so. Claimant had been disqualified from his position of First Trick Telegrapher at Carrier's Wansford Yard. After the disqualification,

Claimant did not make himself available for other service. He was given direct instruction by Carrier to mark up or present medical evidence supporting any claimed physical inability to perform service if he was not reporting for reasons of health.

When Claimant did not make himself available for service, or present a medical reason for his failure to do so, Carrier convened an investigation. Claimant did not contend that he could not work for reasons of health. His position was that he would only work the first shift position from which he had been disqualified. Faced with Claimant's refusal to report for service, after competent direction to do so, Carrier found Claimant insubordinate and dismissed him.

Clearly Carrier acted on a record which contained substantial evidence supporting the charge of insubordination. Its action was not arbitrary, capricious or discriminatory. One of the most basic tenets, at least the one most frequently encountered, in labor relations is "obey now, grieve later." As the Board views Claimant's disqualification, it was fully justified and taken in accordance with the Rules. However, assuming for the sake of discussion, that it was not, Claimant's recourse was to pursue a claim. He could not refuse to work. When Carrier directed him to make himself available for service he was required to do so. Reliance on asserted injustice and impropriety in his disqualification from the first trick telegrapher's position is misplaced. His recourse lay in the grievance procedure, not in self help. Nor is the asserted fact that he would not have received a monetary award in his claim for alleged improper disqualification a ground for refusing to work as Carrier directed him to do. To repeat, his recourse was to pursue his claim, he could not engage in self help.

The Board finds that Carrier had substantial grounds for disqualifying Claimant from the position of first trick telegrapher at Wansford Yard. It further finds that Claimant's refusal to perform service for Carrier, other than the position from which he had been disqualified, was insubordination and therefore Carrier had just cause for dismissing him from its service.

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 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.

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Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.