

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24257  
Docket Number MW-24356

Robert W. McAllister, Referee

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

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

(1) The dismissal of B&B Carpenter Richard Andress, Jr. for alleged insubordination on October 13, 1980 was without just and sufficient cause and on the basis of unproven charges (System File MW-80-185).

(2) B&B Carpenter Richard Andress, Jr. shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Richard Andress, Jr., the Claimant, was employed by the Carrier as a carpenter in the Bridge and Building Sub-department. As a result of his actions on October 13, 1980, Claimant was dismissed from service for violation of Rule 801 in that he was insubordinate.

The Organization argues Claimant did not refuse to comply with instructions and Carrier has failed to meet its burden of proof. According to the Organization, no evidence exists to show Claimant intended to resist authority, and the record does not justify the discipline assessed nor the charge of insubordination.

The Carrier contends the evidence adduced at the hearing proves the Claimant guilty as charged. Carrier notes Claimant was clearly issued instructions, which he did not follow. This Board agrees. Furthermore, with respect to any concern for safety by Claimant, the Board concurs with Carrier that any remedy lay in the grievance procedure. Claimant's responsibility was to comply with the instructions, a principle which is the essence of every Collective Bargaining Agreement. The transcript also indicates the exchange between Claimant and his foreman concerning going off the timeroll was less than clear. Under such circumstances, we cannot agree Claimant was duly warned that going off the clock would subject him to discharge. While the Board will not condone any failure to follow instructions, in light of the above, we consider the penalty of discharge to be excessive. Claimant's time off will be considered a suspension and he is forewarned future acts of non-obedience will not be tolerated. Claimant is to be reinstated with his seniority rights intact, but without back pay.

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 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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

