

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24665
Docket Number MW-24796

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Willie Jackson, Jr. for alleged insubordination on May 14, 1981 was without just and sufficient cause and wholly disproportionate to the offense with which charged [System File 37-SCL-81-18/12-39(81-36) G1].

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant, with seniority from November 20, 1978, was employed by the Carrier as a trackman, assigned to T&S Gang No. 8589 under the jurisdiction of Foreman B. R. Smith and Roadmaster R. P. Silcox, at Calhoun Falls, South Carolina.

On May 13, 1981, claimant sustained an injury to the ring finger of his right hand, for which he received medical treatment and returned to full duty about 2:00 P.M. The Organization contends that about 6:54 A.M., May 14, 1981, the claimant approached the foreman and requested to be returned to the doctor, Dr. Oliver, who had treated him the day before, for further treatment; that when reporting the claimant was dressed in street clothes. A controversy, or misunderstanding, arose between the claimant and the foreman about claimant changing into work clothes and proceeding to the work site with the other members of the gang. On May 18, 1981, claimant was notified by the Roadmaster:

"On Thursday May 14, 1981 at Calhoun Falls, S.C. you answered roll call in your street clothes, sandals (sic) and without hard hat. Foreman B. R. Smith ordered you to get properly dressed for work several times which you refused to do.

As result of this conduct you are hereby suspended from the service of the SCL RR Co. and charged with violation of Rule 18 of the Safety Rule Book which reads in part 'insubordination'.

A hearing has been scheduled for 9:30 AM, May 26, 1981 to be held in the dining car of Force 8589 Abbeville, S.C. at which time you will be present to answer the charges.

You may be represented by the duly accredited representative of the employees and you may have present any witnesses you desire who have knowledge of this incident. It will be your responsibility to arrange for their presence. Your personal record will be subject to review in the hearing."

The investigation was conducted as scheduled and on June 1, 1981, claimant was notified by the Division Engineer:

"Reference hearing that was held in the dining car of T&S Gang 8589 at Abbeville, S.C., on May 26 incident to charges of insubordination being placed against you by Roadmaster Silcox.

You were charged with violation of Safety Rule 18, that part dealing with insubordination, when you refused to follow Foreman B. R. Smith's instructions to change into your work clothes and proceed to the work site. Testimony in the hearing, copy of which is attached, clearly shows that Mr. Smith asked you on three separate occasions to change clothes and prepare yourself for work. Testimony will further show that you used profanity towards Foreman Smith while standing near the dining car as he was walking by.

I have reviewed the transcript and your personal record very carefully, and it is noted that you have been charged with insubordination when you failed to comply with instructions of your Assistant Foreman on a previous occasion. Your poor attitude and arrogant behavior shows that you are not a conscientious employee and could care less about performing a useful service for this Company; therefore, based on the above facts, it is my decision that your employment with the Company be terminated effective the date you were removed from service, which was May 18, 1981.

Any Company property that you have in your possession should be turned over to your Foreman immediately."

A copy of the transcript of the hearing conducted on May 26, 1981, has been made a part of the record. From our review of the transcript, we find that the hearing was conducted in a fair and impartial manner. We do, however, consider that claimant's request made to the foreman that he be returned to the doctor who had treated him the day before, was reasonable. The foreman's initial response, in his own words:

"This was on Thursday morning at which time I told him in my words, Okay Mr. Jackson, I'll take you to the doctor a hundred times a day if it's necessary but answer roll call and I'll get you to the doctor as soon as I can."

seems an inappropriate or strange response to a reasonable request. It appears from the foreman's statement that some time later he told Jackson:

"I told him at this time that he would have sufficient time to go change his clothes, get in work clothes, his boots, hard hat and whatever and catch the truck and go to Mile Post 448 and I'd get him to the doctor as soon as I could."

It does appear to the Board that the foreman's instructions to the claimant lacked specificity. Claimant contacted the Roadmaster for clarification, after which he proceeded to change clothes and asked the foreman to wait for him, but the foreman declined to wait, telling the claimant to stay on the camp cars and he would send a truck back after him. Claimant was later taken to the doctor, returned to the gang about 12:30 P.M., but was sent to the camp cars for the remainder of the day.

It is quite clear that claimant did not change to work clothes until he was instructed to do so by the Roadmaster. While it may be said that he did not comply with the instructions of the foreman, it would appear from the record that this resulted more from confusion or misunderstanding than a deliberate attempt to defy the foreman's instructions. As indicated previously, the foreman's initial response to the claimant's request was far from clear.

Some discipline was warranted against the claimant, but the facts as developed in the investigation, even when considered together with claimant's prior record, which was made a part of the investigation and which we do not consider as terrible as the Division Engineer and Carrier's highest officer of appeals would have us believe, would not justify permanent dismissal which is considered capital punishment in railroad disciplinary cases. We will award that claimant be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of the 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 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984