

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24879

Docket Number CL-24936

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station Employes
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9689)
that:

1. The Transportation Company violated the Rules of the Agreement, particularly Rule 21 thereof when it dismissed D. W. Christensen, Clerk in the Communications Department at Mason City, Iowa, effective August 28, 1981, following an investigation held on August 27, 1981, and

2. The Carrier compensate D. W. Christensen for all losses sustained as a result of his dismissal beginning with August 21, 1981, the date he was withheld from service pending investigation.

OPINION OF BOARD: Carrier charged Claimant with insubordination in refusing an order to record an investigation issued by R. J. Hendershot, Manager Maintenance Operations, Central Division. The Brotherhood contends Claimant to be innocent.

The incident out of which the charge arose occurred on August 21, 1981, when Mr. Hendershot notified Claimant at 10:00 AM that he would be required to take the transcript of an investigation scheduled for 2:00 PM. Claimant replied, "he wasn't taking any." Mr. Hendershot again spoke to Claimant about the assignment at about 11:55 AM at which time the reply was that Claimant did not know how to run a dictaphone or tape recorder. The official replied that he would have someone available to teach him. Mr. Hendershot did so, and at 1:00 PM Jane Eskman, another clerk in the office went to Claimant's desk and advised she had been directed to give him instructions on the tape recorder. She started to show him how to operate the machine but stopped when he said he wasn't going to do it. She asked if he would rather she not go further with the instructions. He did not respond but continued with his work. She left his desk and reported her negative reception to the Chief Clerk.

On being apprised of Claimant's continuing refusal, Mr. Hendershot, together with Marv Williams, a Division Office Engineer and J. Cunningham, Chief Clerk, Engineering went as a group to Mr. Christensen. He was once again told he would be required to take the transcript and again he refused. On that occasion he stated that he was being "set up" and added he did not work for Mr. Hendershot who had his own clerk. It was explained to him that the practice was to have the clerk take the transcript for whatever supervisor was involved. Mr. Mock, another Engineering Department official was Claimant's direct supervisor and was otherwise engaged for the day. Mr. Hendershot explained further that he had cleared with Mr. Mock for using claimant and advised he had authority to require Mr. Christensen to take the transcript. He made it clear he was giving Mr. Christensen a direct order and again asked him to answer "yes" or "no" as to whether he was going to obey the order. Claimant did not answer. The conversation occurred at the office at about 1:20 PM and, according to Mr. Hendershot there was no loud or abusive language used.

Claimant's testimony as to the conversation differs in some details from that given by Mr. Hendershot. Claimant stated that when asked if he was going to take the transcript he replied, "I have never done this before and I am not your clerk," to which Hendershot replied, "I don't give a damn, just say yes or no. Claimant replied he would like to speak to his Union Representative before replying. Mr. Hendershot stated his unwillingness to bring the Union Representative into the matter and told claimant, "If you don't answer I assume your answer is 'no'."

When 2:00 PM arrived the investigation proceeded as scheduled and the transcript was taken by another clerk i.e., Frances Ward. She too, had never taken an investigation before nor operated a tape recorder. Prior to the investigation she was instructed in the operation in two or three minutes by Mr. Michaels. There is no account in the evidence that she had any trouble in making the transcript. The recorder used is the type similar to those used in the home and is simple to operate. All that is required is to insert the cassette into the recorder and press two buttons to start the operation.

Later, after the investigation was concluded, Mr. Hendershot discussed the matter with his superior, V. J. Tesar, ADM-E, who proceeded to remove Mr. Christensen from service the following day. On August 24, notice of investigation was addressed to claimant as follows:

"You are directed to appear for formal investigation as indicated below:

Place: Asst. Div. Mgr.-Administration Office
600 1st Street NW
Mason City, Ia. 50401

Time: 10:00 AM

Date: August 27, 1981

Charge: Your responsibility in connection with insubordination when you refused to record a Maintenance of Way investigation on August 20, 1981, at approximately 1:20 PM after being instructed to do so by Mr. R. J. Hendershot, Mgr. Mtce. Operations on this same date.

You may be accompanied by an employee and/or representative of your own choosing, subject to provisions of applicable rules in the Applicable Schedule, and you may, if you so desire, produce witnesses in your own behalf without expense to the Transportation Company."

The investigation hearing was held on August 27, as scheduled with claimant represented by Local Chairman E. G. Peterson. Claimant also had two witnesses, i.e., W. E. Ward, signal clerk and A. Gruhn, Budget Stenographer.

In defending against the charge, Mr. Christensen contends he did not refuse to take the transcript but, instead, stated he wanted to talk with his Union Representative before making a reply. His denial does not accord with the evidence. He refused on more than one occasion and also refused to take the instruction proffered by Ms. Eskman. In addition his negative actions made it clear he did not intend to comply with the order. His original reason that he did not know how to operate the recorder was met by an effort to give him instruction which he refused. Nor can we accept it as a proper defense that he wanted to consult with his Union Representative before replying. Nothing in the Agreement requires such action when employees are given proper and reasonable orders to perform specific tasks in connection with their work assignments. If Mr. Christensen felt his rights were being infringed or violated in any way his recourse was to go ahead and perform the duty as assigned and then file a grievance. Nothing in the Agreement gives him the right to self help in such a situation.

Mr. Christensen was simply wrong in his persistent refusals. His deliberate and arbitrary conduct clearly constitutes insubordination. We do not find any evidence in support of the allegation that Claimant was "set up". The order for him to take the transcript of the investigation was proper and reasonable and was issued by an authorized official. It is well established in Adjustment Board awards that a Carrier is not required to continue an employee who refuses to take reasonable orders to perform work. Claimant's arbitrary refusal clearly establishes his guilt of the charge and we do not find carrier action in dismissing him from the service to be unjust or unreasonable.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984