

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25224
Docket Number MW-25389

James R. Cox, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(St. Louis Southwestern Railway Company

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

(1) The dismissal of Track Laborer G. E. Butler for alleged insubordination on May 24, 1982 was without just and sufficient cause and on the basis of unproven charges (System File MW-82-37-CB/356-17-A).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, the charge leveled against him shall be cleared from his record and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Track Laborer G. E. Butler was dismissed for Insubordination May 24, 1982. Claimant concedes that he refused a direct order from Apprentice Foreman Ruth to man the cable on the Scarifer Inserter telling him that he "wasn't going to do it".

That machine, positioned on the rail, clears tie space. A clamp attached to the machine by cable is withdrawn and placed over the end of a tie. The Inserter then drags the tie under the rail. In Claimant's work with the cable, it was necessary to bend, attach the clamp and guide the tie under the rail. Another employee, the Machine Operator, controlled the in-movement of the cable. The evidence does not show, other than bending and stooping, that this work involves any heavy lifting or excessive exertion.

The Apprentice Foreman reported that Claimant Butler refused his instructions to man the cable without explaining the basis for his rejection of the order. Significantly, the Apprentice Foreman warned Claimant of the consequences of his failure to obey -- "I then told him to go down and run the cable or hit the highway". Nonetheless, Claimant persisted in his refusal to perform the assigned work.

The Apprentice Foreman told the Tie Gang Foreman of Butler's refusal. He too instructed Butler to man the cable who replied, "I'll do anything you tell me but I'm not going to man the cable." Following the third rejection of the order, the Tie Gang Foreman told Butler that he was being "written out of service". It was only then that Mr. Butler claimed prior back problems.

Butler had had a lumbar laminectomy in May, 1976, but had been . returned to work without restriction. He had subsequently lost three days when he strained his back setting spikes in 1978, and complained of a back problem in July, 1980 and February 1981.

Following the back surgery, he had been released to perform the work of his then classification of Machine Operator. That job description reads, "Frequently requires heavy manual work when necessary to use hand tools to help maintain and replace track..."

After his 1978 back strain, he was again released to work without restriction. Claimant did not report any back problem after February, 1981.

At his Hearing, Claimant explained that he did not want to pull the cable because he had previously "unloaded some ties on a flat car before and injured the back again. Running the cable consists of bending and lifting and if I do a lot of bending and lifting ties, I felt like that would hurt it again."

In 1981 Butler was twice disciplined for striking a liner with a Ballast Regulator he had been operating, the first time receiving a ten day suspension and, subsequently, discharged but reinstated six months later as a Section Laborer rather than as Machine Operator.

Claimant's willful refusal to obey the direct order of his Supervisor constituted insubordination. Here the refusal persisted despite the Supervisor informing Claimant of the consequences of his act. With certain exceptions of health and for safety reasons, an employee must obey an order and, if he believes it to be contractually improper, grieve later. The Board notes that Claimant had been released to work for a substantial period prior to his 1982 insubordination. He had been medically certified to be able to safely perform work in a classification which included work more strenuous and heavy than the cable manning task he refused. There was no evidence that Claimant had ever claimed inability to perform work of his classification.

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:


Nancy J. Dever - Executive Secretary