

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25625  
Docket Number MW-25872

John W. Gaines, Referee

PARTIES TO DISPUTE: ( Brotherhood of Maintenance of Way Employes  
( Terminal Railroad Association of St. Louis

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

(1) The dismissal of Track Laborer W. G. Kaucher for alleged insubordination on April 22, 1983 was arbitrary, capricious, unwarranted, without just and sufficient cause and on the basis of unproven charges (System File 1983-5).

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

OPINION OF BOARD: Claimant, discharged from service as a Maintenance of Way Laborer in a track gang, had been earlier notified by Carrier to be present at an investigative hearing which followed later as scheduled and which according to the notice was being held:

"...to determine the facts and your responsibility, if any, in connection with your being insubordinate to your foreman, Mr. Curtis Strong, at approximately 7:35 a.m. Friday, April 22, 1983...."

In their locker room, and just preliminary to the time of day and date just given, the track gang had received their Foreman's instructions to sign a "Safety Meeting" form, which form had been filled out "just like it always has been", and which carried preprinted lines for signatures indicating individuals' attendance at the compulsory meeting then being convened. Claimant was last and was expected to sign as had the others. Claimant resisted, arguing a technicality whereby he felt he was not bound to sign right at the time. Then persisting at the time, and thereafter, Claimant allowed the situation of signing his name to turn itself into a matter in the abstract, with the overall purpose defeated. The final result of the situation, as gathered from some equivocal testimony, would appear to be that Claimant did not attend the safety meeting which, with other concerns, reflected Carrier's concern for his personal safety on the job.

A populated locker room is no place to be insubordinate. It undermines authority and group morale for the last member obstinately to decline an order already dutifully complied with by the others present. It is no excusable behavior to bring on confrontation by openly beginning to argue and challenging authority. The course open to Claimant was do the signing and, in due course, to follow the well recognized grievance procedure or even, perhaps, sign under protest if preferred and then grieve later.

Instead the Claimant refused possibly as many as three times, giving his refusal the first time the Foreman made the request of him, his refusal again after the Supervisor had the Foreman specifically give Claimant another opportunity to sign, and effectively a refusal to the Foreman the third time as finally, from the latter's parting remark to Claimant, the Claimant was left to ponder a clear ultimatum "... (w)hen (the foreman) Curtis told me that if I didn't sign it I was gonna be out of service." In this Division's Award 21059 dealing with insubordination involving among other things the refusal, three times, by a wrench operator to return to his assigned station, we considered the operator's resulting dismissal and, in denying his claim for reinstatement, we stated: "Consequently, it is well established that dismissal is not inappropriate in cases of insubordination (citing previous awards)." The offense presently before us is admitted to, it is serious, and guilt of it warrants an appropriate discipline.

The record of Claimant showing him to have less than a six year term of service includes, besides two reprimands assessed in 1982, another reprimand significant because of its recentness of occurrence in 1983 and, of more significance yet, a history of prior acts of Claimant's insubordination with resulting assessments of a twelve day suspension in 1979 and progressively a twenty day suspension in 1981. Continuing acts of defiance done in this dispute were now being done at Claimant's peril.

We will deny the claim. Because of the poor and indeed, a less than long-term, record of Claimant in the past, and inasmuch as the past record may be noted in assessing discipline, the discipline imposed in Carrier's notice of discharge from its service cannot be judged arbitrary or excessive.

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.

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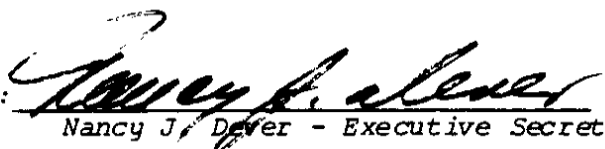
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985.