

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35828
Docket No. SG-35877
01-3-99-3-890**

The Third Division consisted of the regular members and in addition Referee Nancy F. Murphy when award was rendered.

**(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis**

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Terminal Railroad Association of St. Louis (TRRA):

Claim on behalf of M.S. Nicholson, for compensation for all time and benefits lost in connection with his dismissal following an investigation held on April 14, 1999, and to have all reference to this matter removed from his personal record, account Carrier violated the current Signalmen’s Agreement, particularly Article XI, Section 1, when it did not afford the Claimant a fair and impartial investigation, and dismissed him from service without meeting the burden of proving the charges against him. General Chairman’s File No. 99-22-A-D. BRS File Case No. 11093-TRRA.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

M. S. Nicholson (Claimant) was assigned to the position of Signal Maintainer, 8:00 A.M. to 4:00 P.M., under the direct supervision of Signal Supervisor R. Gaertner when this dispute arose.

On April 8, 1999, Signal Supervisor R. L. Gaertner assigned the Claimant and Signalman R. E. Robinson, Jr. to Truck 281, normally assigned to Signal Technician D. Wilkins, for use in crossing inspections. At approximately 3:25 P.M., Gaertner, via base radio, attempted to contact Nicholson and Robinson to inform them that they needed to remove "their" equipment from Truck 281 so that Signal Technician Wilkins could load "his" equipment in case there was a call-out during the upcoming shift. The Supervisor attempted to contact the crew "at least five (5) times," however he did not speak to the Claimant until 3:45 P.M. when Nicholson contacted him. Gaertner informed the Claimant that severe thunderstorms were predicted and they needed to unload their equipment from the truck. It is not disputed that the Claimant stated, in words or substance, that it was "too late" and he would not be able to unload the tools.

A minute or so later, the Claimant reported to Gaertner's office, whereupon the Supervisor again directed him to remove the equipment from Truck 281. For a second time, the Claimant refused to do so, noting that he had already changed into his street clothes, specifically tennis shoes, and could not "safely" off load the equipment. When directed, for a third time, to unload the truck, Nicholson stated: "I get off at 4:00 P.M., and I have something to do."

Shortly thereafter, Gaertner escorted the Claimant to General Manager and Superintendent A. F. Williams' office, and for a fourth time, directed him to remove the equipment from Truck 281. Again the Claimant refused, stating that he had "plans" after work. When Williams directed the Claimant to "stay and take care of the matter" the Claimant grudgingly acquiesced, stating he would follow the directive, but was doing so "under protest." In an apparent change of heart, however, the Claimant asked Williams if he knew what time the shift ended. Williams ignored the question and, for a final time, directed the Claimant to unload Truck 281. It is not disputed that the Claimant replied: "I'll answer your question after you answer mine." At 3:49 P.M., Williams removed the Claimant from service and had him escorted off the property.

On April 9, 1999, the Claimant was directed to attend an Investigation to "determine if any General Rules, Operating Rules, Safety Rules, or Special Instructions were violated in connection therewith, particularly, but not limited to, Rules B, M & N."

Said Investigation was held, and on April 22, 1999, the Claimant was informed that as a result of the Investigation, he was dismissed from service.

The Organization protested the discipline, maintaining at the outset, that the Rules which the Carrier cited were "too broad" and amounted to "scatter shot." The General Chairman further maintained that the Claimant never "actually refused" to unload the truck, and, had the Claimant been given the "opportunity" he would have explained that his daughter was having medical problems and he "strongly believed" that he should check on her as soon as possible. Further, the General Chairman asserts that Signal Supervisor Gaertner and General Manager and Superintendent Williams "berated" the Claimant when he attempted to raise safety concerns. Finally, the Organization notes that the Claimant's co-worker, Signelman Robinson, had unloaded Truck 281 and indicated same to Signal Supervisor Gaertner, prior to the time the Claimant was removed from service. The General Chairman maintains that the discipline assessed is "extremely harsh" and seeks the Claimant's reinstatement with seniority unimpaired and compensation for all time lost.

The Manager Signals and Communications denied the claim contending that:

"The record is clear. Mr. Nicholson was guilty of failing to comply with instructions from proper authority and insubordination as charged. Dismissal from service was appropriate discipline in accordance with Carrier Rule 'M', in that such employees ' . . . will not be retained in the service of this company. . . . ' There is no merit to the allegations that your appeal and claim are based on, and accordingly, both are declined and rejected in their entirety."

The Rules for which the Claimant was cited state, in pertinent part:

"RULE B

Employees must have a proper understanding and working knowledge of and obey all rules and instructions in whatever form issued, applicable to or affecting their duties. If in doubt as to their meaning, employees must apply to proper authority for an explanation.

RULE M

Employees who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, who fail to comply with instructions in whatever form issued, or who conduct themselves in any manner which would subject the railroad to criticism will not be retained in the service of this company.

Negligence in handling company business, sleeping on duty, neglect of duty, viciousness, desertion, dishonesty, insubordination, immorality, disloyalty, making false statements, or concealing facts concerning matters under investigation, are sufficient cause for dismissal.

RULE N

All employees must comply with instructions from proper authority and must perform all of their duties efficiently and safely.

While rules are subdivided and captioned for convenience, they apply equally to all employees and must be observed wherever they relate in any way to the proper performance of the duties of any employee. The railroad company reserves the right to vary therefrom, as circumstances may require."

On the afternoon of April 8, 1999, some 15 minutes prior to the end of his shift, the Claimant was directed, at least five times, to remove equipment from Truck 281. Each time the Claimant was asked he refused the directive(s), contending that it was "too late" and that he had "plans" after work. The Organization asserts that the Claimant's continued refusal to do as he had been directed was premised upon his need to get home to his sick child, and that the Claimant was not able to impart that information to his superiors because he was not given the opportunity. However, we find no evidence on this record which supports that assertion. Because the Claimant found ample opportunity to state, at least five times, that it was "too late" to unload the truck because his work shift ended at 4:00 P.M., and he had "plans," he clearly had an opportunity to explain any extenuating circumstances that would mitigate his repeated refusals to do as he had been directed.

It is a basic obligation of an employee to abide by reasonable work related Rules. It is clear from the record evidence that the Claimant did not fulfill that obligation. The Claimant was given at least five opportunities to obey Signal Supervisor Gaertner and General Manager and Superintendent Williams' directives, and his unwavering refusals to do so clearly constitutes insubordination. We find nothing on this record which warrants modification of the Carrier's imposition of the discharge penalty. Therefore, this claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 14th day of November, 2001.