

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42896
Docket No. MS-43406
18-3-NRAB-00003-160044**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(M. K. Williams

PARTIES TO DISPUTE: (

(Norfolk Southern Railway Company

STATEMENT OF CLAIM:

“The purpose of this letter is to file a grievance against Norfolk Southern RR my employer.

On September 12, 2014 approximate date I was summoned to my Supervisor’s office. Upon entering the office I was met by Mr. Jasen Jorgensen and Chief Clerk Patricia Garcia. Where upon entering immediately.

Statement made by Jansen: Talking in a loud Manner. Said to me inflectively sign this, I’m ordering you to sign this.

I was shocked and frightened by his tone of speech. There by placing me in a hostile environment in which conduct and actions that were not possible before possible.

Jasen Jorgensen verbal assault caused me to reply out of fear me saying I’m not taking orders. Whereas under different circumstances that would not have been my response. I felt that it was a direct personal assault.

Jansen height is well over 6; he’s a muscular man and frightening.

Page 22 of transcript of investigation Patricia Garcia, his witness testified when asked about Jasen behavior.

Yeah, he, he, he asked her sternly, yeah when he gave her the order to, the directive to sign it, it was in a management stern voice, strong, strong.”

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.

The Carrier contends that the Petitioner is guilty of violating GR-1(a) by failing to follow instructions where a supervisor sent her a safety contact signature list and requested that she sign it. The signature was being requested so that she acknowledged that she had read and understood a rule or regulation. The Carrier also contends that the twenty-day actual suspension and the thirty-day deferred suspension that were assessed to the Petitioner were neither arbitrary nor capricious.

The Petitioner contends that she understood the rule or regulation that she was instructed on and that there was no need for her to sign the document. She argues that the supervisor acted improperly by asking her to affix her signature to the document at issue.

The parties being unable to resolve their dispute, this matter came before the Board.

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Petitioner was guilty of failing to follow the orders of her supervisor to sign a document indicating that she had read and understood a particular regulation or rule. The record reveals that the Petitioner understood the direction that she received from her supervisor and stated very clearly “I will not follow any orders.”

The Petitioner’s action constituted clear insubordination. It is fundamental that even if an employee disagrees with an order, the general rule is to “act now and grieve later.” The Petitioner in this case failed to act in accordance with the supervisor’s order, which was not in any way dangerous to her safety. Consequently, she violated the basic employer/employee rule and subjected herself to discipline.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier’s imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Petitioner in this case had recently been disciplined for a similar offense of failing to sign a safety contact sheet. Her record also contains several suspensions for excessive absenteeism and providing a false doctor note as well as failure to properly perform her duties. Given the seriousness of this offense of insubordination at issue here when coupled with her previous disciplinary background, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the discipline of a twenty-day actual suspension and a thirty-day deferred suspension to the Petitioner in this case. Therefore, the claim must be denied.

AWARD

Claim denied.

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ORDER

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

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

Dated at Chicago, Illinois, this 10th day of January 2018.