

PUBLIC LAW BOARD NO. 2104

Parties: Brotherhood of Locomotive Engineers
and
Sacramento Northern Railway

Statement of Claim: "Request for reinstatement of Engineer
C. O. Crews with seniority unimpaired and
payment for all time lost."

Discussion: On the claim date, the Claimant Engineer was regularly assigned to Job S-601 operating between Pittsburg and Sacramento. The Claimant went on duty at 9:00 A.M. at Pittsburg. Between 9:00 A.M. and 11:00 A.M., the crew made one switch. The Carrier asserted that between 11:00 A.M. and 3:00 P.M. the crew performed no work, because they were waiting for empty steel gondolas to bring back to Sacramento. Between 3:00 P.M. and 4:45 P.M. the crew worked at making up its train and at 4:45 P.M. it departed Pittsburg for its home terminal of Sacramento. As the crew was approaching Stockton, 44 miles from South Sacramento, Conductor McGlomery, at 5:30 P.M. requested permission of the Dispatcher to go eat at Stockton. Mr. McGlomery testified that he was neither given permission or denied permission to go eat because the Dispatcher's radio was not understandable. Dispatcher Baird conceded that he was not able to communicate with the crew because of a faulty radio. However, the evidence indicated that Superintendent Metzdorf testified that at about 4:45 P.M. he had notified Assistant Chief Dispatcher Goolsby that it was urgent to get the Claimant's Train back to Sacramento and that box lunches should be provided for the crew at Stockton and they should be directed to proceed to Sacramento. Because of the difficulty of communicating with

- 2 -

the crew by radio Terminal Trainmaster Lorda at Stockton reached the crew at the yard and informed them that they should accept the lunches and proceed to Sacramento. Yardmaster Iwoldt had already spoken to the crew and they had informed him that they would not accept the lunches but instead were going to a restaurant in Stockton, and the Yardmaster had communicated this to Mr. Lorda. Mr. Lorda ordered the lunches and then accompanied by Mr. Humphries, Assistant Shop Superintendent, went out to the yards where the Claimant's train was located.

Mr. Lorda testified he went up to the crew, introducing himself, and told Conductor McGlonery to accept the lunches and go on to Sacramento. He added the Conductor asked him if he would put it in writing that he was refusing permission for the crew to go to a restaurant. Trainmaster Lorda replied that he would not put it in writing, but stated that he was ordering them to accept the lunches and go to Sacramento.

Mr. Lorda testified that at this point the Claimant stated that he was refusing the lunch and going to a restaurant to eat. The Trainmaster stated he ordered the Claimant to accept the lunch and take the train to Sacramento, but the Claimant stated, "No. I'm going to the restaurant." The Trainmaster testified that at this point he took the Claimant out of service.

The Claimant testified that radio reception was poor but they had told the Tower they were going to eat at a restaurant. On their way to the restaurant they met Trainmaster Lorda. The Claimant stated that Mr. Lorda asked him if he would accept a box lunch and the Claimant replied, "No." He stated that the Trainmaster then told him he was out of service, and that was the extent of the conversation. The Claimant denied

- 3 -

that he was instructed to take the train to Sacramento. The Claimant added that he told the Trainmaster the crew had been on duty nine hours and deserved a hot meal.

On the basis of the above stated facts herein set forth in a capsulized version, the Claimant was removed from service, and given a duly noticed Investigation and found guilty of being insubordinate, and discharged from the service.

At a Board session held on March 9, 1978, after hearing oral argument from the Parties, the Board met in executive session and issued an interim Award and Order, restoring the Claimant to his position and reserving for future determination the matter of back pay, if any.

The detailed respective positions of the parties are:

Carrier

The Carrier stated that the evidence of record clearly shows that the Claimant was guilty of insubordinate conduct. The record is clear that the Claimant was not merely ordered to accept a box lunch, but also directed to take his train to Sacramento. The Carrier noted that the Claimant was obligated to take his train to Sacramento since that was the final terminal. The Claimant, as an experienced railroader, knew that the Carrier wanted him to take his train without delay to Sacramento.

The Carrier stated it is indeed a specious argument that the Carrier only wanted the Claimant to accept a box lunch. The Carrier did not dismiss the Claimant for refusing to accept a box lunch, but rather dismissed an employee who refused to continue his assignment and move his train to its final terminal unless he was permitted to delay

- 4 -

the train at an intermediate point while he went off to a restaurant to eat. This sort of conduct constitutes insubordination properly deserving discipline.

The Carrier stated that a review of the entire record will support the Carrier's position that the Claimant was guilty as charged, and while the Board may have found it proper to convert his dismissal to a suspension, the evidence does not warrant awarding him any back pay for his impermissible conduct.

Organization

The Organization first alludes to Article 76 of the Schedule Agreement which provides that freight engineers will be given a reasonable time to eat between terminals, but must notify the Dispatcher in advance when they intend to do so. The Organization stated the record does not reveal such compelling circumstances that would permit the Carrier to vitiate a clear contractual right of the Claimant and his crew. In the case at hand, the Conductor notified the Dispatcher at Stockton that the crew wanted to go to a restaurant to get something to eat. The crew had been on duty eight hours and 40 minutes without any food and it was not unreasonable for them to wish to go to a clean place where they could enjoy a meal without the noise, dust and tension present when eating a box lunch on a moving locomotive.

The Carrier has alleged but not proved that a situation prevailed in Sacramento that demanded the crew forgo its dinner at Stockton in order to bring the train back to Sacramento without having a dinner break to which they were contractually entitled to reserve.

The Organization further stated that even if there was an important connection for the Claimant's train to make in Sacramento,

- 5 -

there is no evidence in the record to indicate that had the Claimant and crew had gone to dinner at a restaurant in Stockton, that they would not have arrived in Sacramento before "outlawed" by the Hours of Service Law and still in time to make the connection.

The Organization stated that it was not unreasonable for the Claimant who had been on duty over eight hours, and who was tired, sweaty and hungry, to want to exercise his contractual right to eat. He only wanted to wash up and eat a decent meal in suitable environment.

The Organization further contended that the Claimant was not guilty of insubordination because he was never given a direct order to go to Sacramento. The Claimant was a senior engineer and a union representative, who was determined not to accept a box lunch. Trainmaster Lorda ordered the Claimant and crew to accept the lunch. When the Claimant refused, he took him out of service. Mr. Lorda never stated to the Claimant that he was ordering him to take his train to Sacramento. If that direct order had been given, the Claimant would have complied. But the Trainmaster acted in anger and prematurely. However, the Claimant never refused an order to take his train to Sacramento and thus was not guilty of insubordination. All that the evidence indicates is that the Claimant was ordered to accept a box lunch which he refused. An employee has a right to refuse to eat a Carrier's offered meal without being guilty of insubordination.

The Organization states that it is familiar with the general rules and principles governing insubordination. However, it asserted the right of the Carrier to have its orders complied with is not absolute and there is support for the argument that an employee who is sustained by an unambiguous provision of a Contract may refuse an order from a superior.

- 6 -

In short the Organization stated that the Claimant acted under a color of contractual right to take his meal in a restaurant, and secondly, he was never given a direct order to proceed to Sacramento so that he was not guilty of refusing to obey or comply with a direct order, and therefore he was not guilty of insubordination.

Findings: The Board, upon the whole record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the meaning of the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds that the weight of the probative evidence supports the Carrier's position that the Claimant engaged in insubordinate and contumacious conduct, and refused to take his train on to Sacramento until he had an opportunity to eat dinner in a restaurant. The Board finds that the Claimant and crew were not contesting with the Carrier's supervisory officers whether they should accept a box lunch, but rather whether they should accept a box lunch and continue on their trip to Sacramento or whether they could decline the box lunch and go to a restaurant for dinner and then continue to their home terminal. The record is replete with direct evidence that the Claimant refused to accept the box lunch and continue uninterruptedly to Sacramento. This was impermissible conduct on the part of the Claimant and is conduct for which he could receive severe disciplinary sanctions. It would completely subvert the employer-employee relationship to allow an employee to determine which instruction he would obey and which he would not, absent a situation

- 7 -

where compliance with the given instructions would place the Claimant in imminent danger of life or limb. If the Claimant believed his contractual rights were being breached when he was not allowed to go to the restaurant in Stockton, he had to comply and then grieve the alleged breach of Article 76. He had no valid basis to refuse the instructions of his supervisory officers. To permit an employee to resort to self help in order to enforce the Agreement, is to permit the rubric by which labor-management relations are conducted, to become a nullity. The civilities and amenities of orderly conduct which is the cement that holds together, in large measure, our system of industrial and labor relations, demands that the practitioners thereof, comply with employer directives and then seek to adjudicate any differences that arise out of the application and interpretation of the contested contract provisions. To allow affected employees to make their own determinations as to whether they will comply with the rules is in effect to do away with the "rule of law" which has been established over a period of many years in this Industry.

The Board has restored the Claimant to his job, because it finds that dismissal was too severe a penalty for an employee with over 30 years seniority, rather than that he was innocent of the charges. However, the Claimant must realize that he had come to the end of the road insofar as refusing to comply with instruction from duly constituted authority. While there are many avenues of relief available to the Claimant to protest Carrier instructions which he believes are contractually in error, insubordination is not one of them.

The Board puts the Claimant on clear and explicit

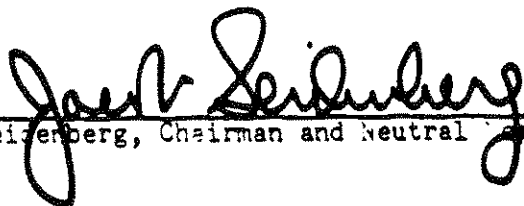
Award No. 1
Case No. 1

- 8 -

notice that any repetition of insubordinate conduct may result in his quick and certain removal from the employment of the Carrier.

Award: Claimant's discharge converted to a suspension,
seniority unimpaired, but with no back pay awarded.

Order: The Carrier should immediately comply with the
Award, if it has not already done so.



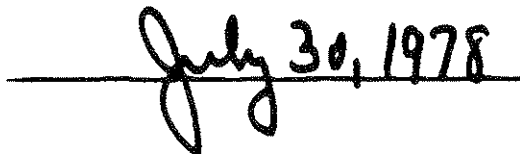
Jacob Seidenberg, Chairman and Neutral Member



W. K. Hirst, Employee Member



R. R. Gentry, Carrier Member



July 30, 1978