

Award No. 14
Case No. 14

Public Law Board No. 2203

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Consolidated Rail Corporation

STATEMENT
OF
CLAIM:

1. Claimant Thomas E. Smith's dismissal was unjust, arbitrary, capricious and harsh for the offense.

2. Carrier shall reinstate claimant with all rights unimpaired and payment for all time lost.

FINDINGS:

Claimant, a machine operator with 15 months service, was dismissed for insubordination after a hearing had been held on due notice in the matter. The hearing appears to have been conducted in accordance with the requirements prescribed by applicable rules, practices and awards and no prejudicial procedural error is disclosed by this record.

On the morning in question, October 11, 1977, claimant

was one of twenty-five men represented by Petitioner who did not comply with direct orders from their supervisors to get off Company buses and go to work. The orders were clear and definite and no sound basis existed for misinterpreting them.

Nor was there any valid reason for failing to comply with them. The fact that the employees may have had good reason to complain about lack of food and missed meals is no justification. Their recourse was to utilize the orderly processes of the grievance procedure and not to resort to self-help. It was their duty at that particular time, on the morning of October 11, to get to work promptly when directed to do so by their supervisors.

Dismissal is well warranted in this situation and this Board would not interfere with such discipline in the absence of a material defect in the record.

Petitioner contends that other employees have been permitted to return to work although they also refused to leave the buses and go to work. The record establishes that there were twenty-five employees in the buses that morning represented by Petitioner. All twenty-five were immediately taken out of service but two, Rich Gongwer and Joe Schmitt, offered to return to work immediately after the incident and were permitted to do so without further disciplinary action; Gongwer maintained that he wanted to leave the bus but was threatened with physical harm if he did so. There is no evidence that claimant or other dismissed employees offered to work that day.

Of the remaining twenty-three men, sixteen were re-stored to their positions on a leniency basis, but without back pay after a hearing had been held in each instance. Their time out of service was held to be a suspension without pay.

Two other employees, M. J. Holt and T. J. Lavender, have filed claims in respectively Cases 19 and 20; they were called back to work from furlough on March 13, 1978 after having been held out of service since October 11, 1977. There is also some indication that they had been ill on the date of the bus incident.

The remaining five employees include claimant as well as R. C. Seabolt (see Case No. 15), D. D. Slaughter (Case 16), P. Chappus (Case 17) and R. Chappus (Case No. 18). They were dismissed after hearing, and unlike the other 20 men on the buses, have not been reinstated. According to Carrier, it did not have them return to work because of poor previous attitude towards supervisors and unsatisfactory work and because they were "the ring leaders in this incident and used threats and other inducements to cajole the other members of the gang to either join in or continue in the insubordination."

There is no evidence in claimant's hearing transcript of threats or inducements. On the other hand, the record clearly establishes Carrier has good reason to dismiss all who participated in the job action. Once that critical point was established, it was not improper for Carrier, in


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the exercise of its managerial discretion, to choose to reinstate some of the participants at an earlier date than others on a leniency basis.

In the light of these considerations and upon viewing the circumstances of this case in their entirety, we will not award back pay to claimant but will direct Carrier to restore him immediately to his position with the same seniority status protection that was afforded the sixteen other employees reinstated after hearing.

AWARD: Claimant reinstated without back pay.

Adopted at Philadelphia, Pa., May 17, 1979.


Harold M. Weston, Chairman


Carrier Member


Employee Member