

Award No. 29
Case No. 54

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

(1) The dismissal of Foreman P. D. Yates for alleged insubordination was without just and sufficient cause and wholly disproportionate to the charge leveled against him.

(2) Foreman P. D. Yates shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Claimant, a foreman, was dismissed for insubordination. At the time of his termination, he had occupied the position of foreman for about nine years.

In the course of an inspection trip on Thursday and Friday, August 3 and 4, 1978, Carrier found a considerable number of defective rails and therefore found it necessary to

issue Slow Orders. Understandably, it was anxious to remove the Slow Order and defective rail. It is not surprising therefore that on Friday afternoon, August 4 at about 3 p.m., it advised maintenance of way personnel that they would have to work on the following day to that end.

Claimant was ordered on August 4 by Roadmaster Horsley to report on Saturday, the following day, for that duty. According to his testimony, he replied that he would be unable to work on that day. Horsley testified, on the other hand, that claimant "told me plainly that he was not going to work." The difference, if their versions are not significant. Claimant did not reconsider his position during the ensuing conversations and indeed did not show up for duty on Saturday.

At one point in their discussion, Horsley asked claimant if his men would work. After a few minutes, claimant returned with the advice that the men would not work either. Horsley then reminded claimant that he had bid for the foreman's position and it was his place to protect it. Claimant's reply, according to Horsley, was "Yes, but I had been working eight god-dam months without a contract too."

Assistant Division Engineers Sandefur and Renner then took turns speaking with claimant. Mr. Sandefur instructed claimant to work that Saturday. Claimant, according to Mr. Sandefur's testimony, refused on the ground that he had other

things to do; when Mr. Sandefur told him to have the men work also, he first replied that if Sandefur wanted to talk to the men, he would get them to the phone. Mr. Sandefur reminded claimant that he was the foreman and he would give the men the instructions. After a few minutes, claimant returned to the line and informed Mr. Sandefur that the men had refused the Saturday work.

Mr. Renner then asked claimant to reconsider his refusal since "we had rails to change out to get the slow orders off."

We can well understand claimant's desire to have a weekend that was free of work responsibility. He and his crew had worked all that week and performed overtime. Saturday was his assigned rest day.

On the other hand, his clear responsibility as a regularly assigned foreman was to protect his position, even though rest day work was involved. The instructions ^{were} issued to him by competent authority and were unambiguous and direct. He was not being harassed with unnecessary overtime duty; manifestly, the work in question was important and essential to efficient railroad operations.

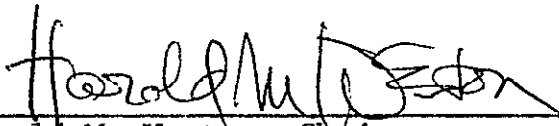
We are satisfied, in the light of this record, that no sound basis exists for relieving claimant from his obligation as a foreman and employee to comply with orders. There is no indication that compliance would have exposed him to any appreciable hazard. At the time of the incident and in his testi-

mony he presented no persuasive explanation for his refusal to work.

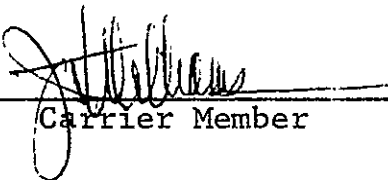
We find no ground for substituting our judgment for that of Carrier in this matter.

AWARD: Claim denied.

Adopted at Louisville, Kentucky, April 11, 1980.



Harold M. Weston, Chairman



Carrier Member



Employee Member