

Public Law Board No. 4747

FEB 23 1990
VICE PRESIDENT
LABOR BOARD

Claimant - D. D. Martin
Award No. 5

Case No. 5

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Union Pacific Railroad

STATEMENT
OF CLAIM

The suspension pending investigation and the fifteen (15) actual working days suspension from service imposed upon Section Foreman D. D. Martin for alleged violation of various company rules as indicated in Mr. Connolly's letter of December 21, 1989, was arbitrary, capricious and unwarranted.

That claimant's record shall be cleared of the discipline referred to in Part (1) and he shall be made whole for all losses sustained from said suspension.

FINDINGS

Upon reviewing the record, as submitted, the Board finds that the Parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Public Law Board is duly constituted and has jurisdiction of the Parties and the subject matter; with this arbitrator being sole signatory.

On December 8, 1989, a formal investigation was held to determine whether or not the Claimant had been insubordinate and quarrelsome on December 1, 1989, when he allegedly refused the order of his immediate Supervisor, Manager of Track Maintenance;

A. J. Blackwell, to remain in his vehicle to discuss past performance procedures and compliance with other rules. The Claimant was accused of violating Rule 607, which reads in part:

Rule 607: CONDUCT:

Employees must not be:

- (3) Insubordinate;
- (6) Quarrelsome.

The charges arose following an incident on December 1, 1989, when the Manager of Track Maintenance approached the Claimant at the work site and asked him to get into his vehicle to discuss the filing of time and other procedures. The Claimant initially complied. At some point, he decided he no longer wanted to remain in the vehicle and got out against his supervisor's direction. Despite being asked to get back into the vehicle at least three times, he ignored the order and stayed outside. Following his refusal to get back into the vehicle, the Supervisor sent him home. The above cited investigation took place a week later. The Carrier believed the evidence proved the Claimant had violated the cited rules and suspended him for fifteen (15) days.

The only apparent witnesses to the incident were two employees who were asked to sign a statement of what they saw and heard. They both signed one typed statement which was submitted as an exhibit. According to the statement, the Claimant never refused to talk to the Supervisor and was not argumentative, but did indicate he wanted to stand outside and talk. The statement otherwise, substantiated the Supervisor's contention that the

Claimant refused to comply with a directive to get back into the car. There were no witnesses to the conversation between the two men while they were actually in the car together.

The only thing proven is that the Claimant did indeed ignore the Supervisor's order to get back into the car. It must be kept in mind that the Claimant was approached on the job. He was working at the time the Supervisor first encountered him. His excuse that his back was bothering him, while it may have been true, was not an acceptable reason for disobeying a reasonable order from a supervisor. This Board believes the Supervisor's request for the Claimant to carry on a discussion in the Supervisor's vehicle was reasonable. Therefore, the Claimant should have complied.

Insubordination is a serious matter. Even though the Claimant has obviously been a good employe for over twenty-five years, ignoring a reasonable directive from a Supervisor is unacceptable behavior. And while first offenses for many infractions would warrant a much lighter disciplinary assessment, the Board cannot view the fifteen (15) days suspension unreasonable for this rule violation.

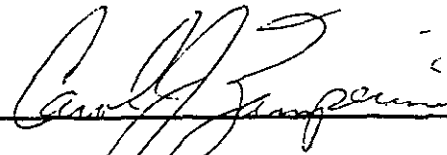
Unlike the case cited by the Union, the Claimant, here, never requested Union representation during the discussion with the Supervisor and was not ultimately discharged.

The Claimant was afforded a full and fair hearing. He was afforded the opportunity to present witnesses.

4747-5

AWARD

The claim is denied.

A handwritten signature in cursive script, appearing to read "Carol J. Zamperini", is written over a horizontal line.

Carol J. Zamperini

Neutral

Submitted:

January 30, 1990
Denver, Colorado