

BEFORE PUBLIC LAW BOARD NO. 5027

Case No. 3

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY (FORMER GALVESTON, HOUSTON
AND HENDERSON RAILROAD COMPANY)

DEC 12 1991
FILE PRESENT
LABOR RELATIONS

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. Carrier violated Article 19 of the Agreement when Trackman Rick Roberts was dismissed from service on March 22, 1990 (System File G-4/900269).
2. Trackman Roberts shall have his record cleared of the charge leveled against him, he shall be restored to the Carrier's service with all rights and benefits due him and he shall be paid for all time lost.

FINDINGS:

Claimant Rick Roberts was employed by the Carrier as a trackman on the Galveston Subdivision.

On March 2, 1990, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

. . . to develop facts and place your responsibility, if any, in connection with your failure to comply with instructions of Foreman Sammy Castillo on March 2, 1990, at approximately 9 a.m., milepost 15 on the Galveston Subdivision.

You are being withheld from service pending outcome of this formal investigation.

The hearing took place on March 8, 1990; and on March 19, 1990, the Carrier notified the Claimant that he had been found guilty of the charges against him and in violation of General Rule B and Rule 607 of the Safety, Radio and General Rules and was, therefore, being assessed discipline of dismissal from the

service of the Carrier.

The Organization thereafter filed a claim on behalf of the Claimant, challenging his dismissal on the grounds that the Claimant was not afforded a fair and impartial hearing, being in violation of Article 19; that the Carrier failed to present substantial evidence to prove the charges leveled against the Claimant; that the Claimant was discriminated against and harassed by the Carrier's section foreman, provoking the Claimant's response against the foreman; that the Carrier failed to apply the principle of progressive discipline toward the Claimant considering the Claimant's seven years of unblemished service and his first experience at a disciplinary hearing; and that the Carrier's discipline was arbitrary, capricious, improper, unreasonable, unwarranted, and excessive.

The Carrier denied the Organization's claim on the grounds that no procedural defect occurred during the handling of the Claimant's grievance which warrants setting aside the discipline assessed and that the hearing was conducted in conformity with Article 19; that the Carrier established, through substantial evidence, that Mr. Roberts violated Company rules (Rules B and 607) when he asserted his refusal to obey the instructions of his supervisor, which was insubordination; and that the level of discipline assessed is not arbitrary, capricious, or an abuse of Carrier discretion due to the seriousness of the offense of the Claimant.

The parties being unable to resolve the issues in this case,

this matter came to be heard before this Board.

This Board has reviewed the procedural arguments raised by the Organization and we find all of them to be without merit.

This 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 Claimant was guilty of insubordination when he refused a direct order from his supervisor. The record is clear that the Claimant was given an order and he refused it and he has even admitted on several occasions that he refused it. He has even admitted on several occasions that he refused the order and he has indicated that he regrets his actions.

Once this 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 the Carrier's action to have been unreasonable, arbitrary, or capricious.

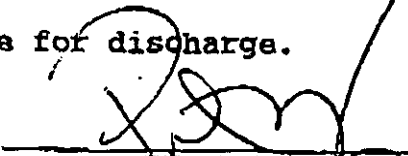
In the case at hand, the Claimant has been working for the Carrier for seven years. His record reveals no previous discipline during those seven years. It is not evident from the record that the Carrier took into consideration the Claimant's previous work history when it terminated him. This Board recognizes that insubordination is the type of offense that can lead to termination even with someone with long seniority who has an unblemished record. However, given the facts involved in this case, and the fact that the Claimant readily admitted his

wrongdoing and indicated to others that he regretted it, this Board finds that the action taken by the Carrier in terminating the Claimant's employment after seven years was unreasonable.

In no way does this Board want the Claimant to believe that he acted properly. As he has admitted, he was insubordinate and he must understand that insubordination is the type of offense which usually leads to serious discipline, often discharge. Because of the Claimant's previous excellent record lasting over seven years, this Board is hereby ordering that the Carrier reinstate the Claimant without back pay. The time off since March of 1990 shall be considered a lengthy suspension and the Claimant is to be instructed that any future insubordination or wrongdoing of any kind will be enough to consider termination after this lengthy suspension. This Board believes that the Claimant now recognizes that when he receives a direct order he must comply with it. If he does not like the direct order, he may grieve it later. The workplace is not a debating society and the Claimant must follow the orders or face serious punishment.

AWARD

Claim sustained in part. The termination of the Claimant is hereby reduced to a lengthy suspension. Claimant is to be returned to work without back pay on or before December 15, 1991. Claimant should be apprised that any future wrongdoing on his part will be cause for discharge.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Dated: DECEMBER 1, 1991