

AWARD NO. 60

CASE NO. 73

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The ten (10) day suspension of B&B Carpenter D.B. Smith was without just and sufficient cause and wholly disproportionate to the alleged offense. (System Files D-11-24-33)
- (2) B&B Carpenter D.B. Smith be compensated for all time lost and the discipline be stricken from his record."

OPINION OF BOARD:

Claimant was a regularly assigned B&B Carpenter working under the direct supervision of Foreman Zupfer, New Ulm, Minnesota. The record indicates that normally Assistant Foreman Reiger, who holds a Class B or "Chauffeur's License" drives the company truck used by the crew. On the morning of March 28, 1978 however, Reiger was absent from work. Foreman Zupfer told Claimant to move the truck from where it was parked on the south side of New Ulm Depot and to set the truck on the track. From the record before us we find that in order to do so it was necessary to drive for a short distance on a public street. Claimant declined to drive the truck, stating that he did not hold a "Chauffeur's License" and that he believed that he would be violating State traffic laws if he drove the truck on public roads without such a license.

After Claimant refused several orders to drive the truck, the Foreman telephoned Manager of Maintenance Planning Schmitz and he also ordered Claimant to move the truck. Claimant again declined on grounds that he did not have the Class B and believed that it would be illegal to drive the truck without one. At that point Schmitz told Claimant to go home until he could obey orders and, if he continued in his refusal to drive the truck, a disciplinary investigation would be held. On April 3, 1978 Claimant returned to work and again declined an order to drive the truck whereupon he was served with notice to report for formal investigation into the following charge:

"Your failure to perform the duties of your assignment on March 28, 1978, through April 3, 1978."

After that hearing he was found guilty of insubordination and assessed a ten day actual suspension, less the five days already out of service from March 28 to April 13, 1978.

An employee who refuses to obey direct orders of a supervisor acting within the scope of his authority exposes himself to possible discipline for insubordination. If the employee believes such an order to be a violation of his contractual bargaining rights, the accepted and required response is for him to "obey now and grieve later". Two recognized exceptions to that general rule, which may justify a refusal by an employee which otherwise would be considered insubordination, are: (1) a reasonable apprehension that the act ordered would expose him to imminent danger to his well being, and (2) a reasonable belief that the act ordered would be illegal. Once the employer has established the factual refusal to obey an order, the burden shifts over to the employee to prove such justification or else face discipline for insubordination.

In this particular case we do not have to resolve the often debated point of whether the illegality justification turns upon a subjective belief (the employee's perception) or an objective determination (the actual state of the law). There is nothing in this record to suggest that Claimant had other than a bona fide belief that he would be violating traffic laws if he drove the particular truck in question on a public road without a Class B license. It also is established that Claimant had two prior traffic violations on his Class C license and that a third violation could have resulted in suspension of his driving privileges by the State. Leaving aside all of this subjective evidence, however, close scrutiny of the record persuades us that Claimant was objectively correct in his conclusion that to drive that truck without a Class B license would have been a violation of the vehicular and traffic laws of the State of Minnesota. The truck in question had a registered gross vehicle weight (GVW) of 27,000 pounds. The record discloses that the cutoff point for requiring a Class B operator's license rather than a Class C license is 24,000 pounds. The Class C license holder is limited to operation of single unit two-axel vehicles not in excess of 24,000 pounds GVW. Moreover, under the statute the greater of the registered or actual gross vehicle weight controls. Thus, for purposes of the licensing mandate the truck in question had a GVW of 27,000 pounds because that was its registered weight. Given the express mandate of the statute Carrier's assertions to the contrary regarding the actual weight of 24,000 pounds or less is not relevant. Claimant was not in error in concluding that he would have placed himself in legal jeopardy if he had obeyed the order to drive the truck. There is no showing on this record that he was defiant or belligerent toward his foreman, but rather, for the stated reason of illegality, he declined to obey the order. Based upon the particular facts of this case, we are persuaded that Claimant should not have been disciplined.

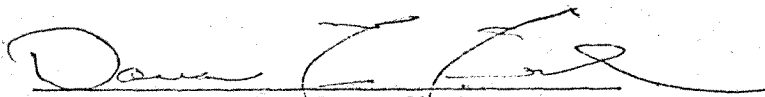
FINDINGS:

Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:


1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was violated.

AWARD

Claim sustained.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: Dec. 5, 1979