

Public Law Board No. 2267

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees

and

Union Pacific Railroad Company

STATEMENT
OF CLAIM:

1. That the Carrier violated the Agreement, effective January 1, 1973, when on February 28, 1977 they discharged Sectionman J.R. Orum, said dismissal being arbitrary, harsh and disproportionate to the offense committed.
2. That the Carrier shall reinstate J. R. Orum to his former position of Section Laborer with seniority, vacation and other rights unimpaired and, additionally, compensate him for loss of earnings suffered account the Carrier's improper action.

FINDINGS:

Effective 8:30 a.m., February 25, 1977, Grievant was removed from service as Sectionman, Section 7231, Yakima, for violation of Rule 700, reading in part: "Employees will not be retained in the service who are..... insubordinate...". The record is clear that Grievant was instructed by his Foreman to unload scrap off the truck, the scrap consisting of joint bars, tie plates, spikes, etc., all of which he could safely and reasonably unload by himself. Grievant, however, did not do what he was instructed to do. He asked his Foreman if he was going to help him, to which he received a "No", and stated: "I never said that I won't unload the scrap, just that I wouldn't do it at that time." (Tr., p.13). Grievant told his Foreman that he was going to help another employee "clean switches and that I would have him help me unload the truck after we finished with the switches." (Tr., p. 14). The Foreman has testified that shortly after instructing Grievant to unload the scrap, he saw Grievant "just walking out of the tool house with a switch broom in his hands. I asked him what he thought he was doing and he said that he was going to help Whitey sweep switches. I told him that I wanted him to unload scrap from the truck onto the flatcar and that Whitey would do the sweeping and oiling. He then asked me if I wanted him to unload the truck by himself, and I said, 'Yes', and he said, 'I'm not going to do that by myself.' I then said, 'John, are you telling me that you are refusing to do it?' He said, 'I will not do it by myself.' I then told him that I would have to fire him if he refused to do what he had been told to do." (Tr., pp. 9-10).

Grievant expressly refused to comply with his Foreman's instructions and arrogated to himself the authority of his Foreman to determine the timing and manner of his work performance and the timing and manner of work performance of his fellow employee. Such refusal to comply with reasonable and proper instructions is insubordination regardless of the Grievant's subjective willingness to perform the requested work under his own desired arrangements. Insubordination yields industrial anarchy and industrial anarchy in railroading obviously cannot be condoned. Grievant's duty was to comply with his instructions and to grieve later if he felt that he was being unjustly treated.

Insubordination is a grave offense, and Rule 700 gives fair warning that employees will not be retained in the service who are insubordinate. The

record does not show circumstances warranting mitigation. Grievant complains that the Foreman "started to give me a bad time about driving the truck and being on the YVT" (regarding getting Whitey to toilet); that the Foreman was "picking on me again about the truck"; that he told the Foreman "to talk to me like a human being and not like a dog"; that he told the Foreman, "I'm in a bad mood this morning." (Tr. pp. 7-8). Conceivably, the Foreman might have been acutely sensitive to Grievant's moodiness and might have treated Grievant with tender and loving care. The Foreman, however, is responsible for work to be done, and there is no evidence that he in any way abused his position, used profanity, or provoked the Grievant. The record not only shows a lack of mitigating circumstances, but there is a positive showing of aggravating factors which justify the full measure of discipline. Grievant attacked his Foreman, who testified that Grievant "threw his broom away and shoved me back from the shoulders with both hands against the tool house. ***He said, 'If you are going to fire me twice, I am going to make sure you are going into the hospital,' and he kept striking me *** At no time did I swing at him". (Tr., p. 10). The Foreman's injuries required medical care. Claimant has admitted attacking his Foreman and inflicting bodily harm, and the Carrier should not be required to retain an individual possessing such a tendency in its employ since it has an obligation to protect its employees from injury by others, and the use of violence at the work place cannot be condoned. It is further noted from Grievant's record that he had approximately four years, eight months service when last removed from service, and that his removal in this instance was the third time he had been dismissed within a period of less than eight months.

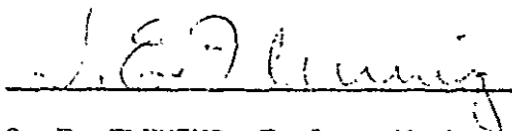
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The Claim is denied.

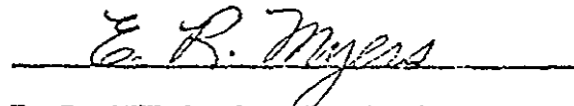
PUBLIC LAW BOARD NO. 2267



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