

Award No. 18
Case No. 18

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

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

STATEMENT
OF
CLAIM:

1. The dismissal of Track Repairman J. Johnson was without just or sufficient cause and extremely disproportionate to the offense with which charged.
2. The hearing held on May 19, 1977 was neither fair nor impartial and it is without force or effect because of Carrier's failure to "state the known circumstances involved" within the notice of investigation submitted to claimant as explicitly required in Clause 15 of Appendix No. 27 (Agreement page 203).
3. Claimant shall be restored to service with all benefits prescribed in Rule 27 (f).

2363-AWD 18

FINDINGS:

The record contains credible evidence, consisting of testimony by Assistant Foremen Grace and Buttrell, that claimant refused their direct and unambiguous orders to pull spikes. So far as the record indicates, pulling spikes was properly within the scope of claimant's assignment. The fact that he felt that he should have been given different duties such as handling a crane does not excuse claimant's refusal to obey the orders of the assistant foremen.

There is no evidence that claimant was deprived of due process or that Carrier committed reversible procedural error. The notice that he had been relieved from duty for insubordination was issued on the day of the incident in question about four hours after it occurred. It does not appear that claimant was confused or misled as to what the discipline was based on or was handicapped in the preparation of his case. He was accorded a hearing on due notice, was well represented throughout the proceedings and given a fair opportunity to present evidence and to cross examine.

While it appears that claimant had been dismissed on a prior occasion for insubordination, we are of the opinion that he should be given another chance to show that he is a cooperative employee. We will direct Carrier to offer him

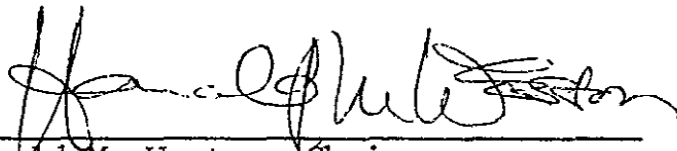
2363-AWD 18

immediate reinstatement with seniority rights unimpaired but without back pay. The loss of time will serve as a reminder to him and other employees that they must comply with direct orders; if they feel that those orders are erroneous, their remedy after immediate compliance is to utilize the orderly grievance machinery of their Agreement.

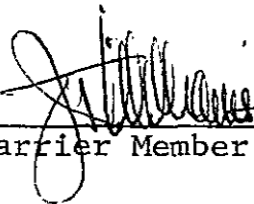
Claimant is clearly not entitled to back pay because of his outright refusals to perform the work assigned to him. The fact that his dismissal did not take place until some four hours after the fact did not prejudice his case in any respect.

AWARD: Claimant reinstated without back pay. Award to be effective within 30 days of its adoption.

Adopted at Louisville, Kentucky, January 7, 1980.



Harold M. Weston, Chairman



Carrier Member



Employee Member