

PUBLIC LAW BOARD NO. 2556

Award No. 33

Case No. 40

File No. MW-406

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement

of Claim: Claim that Machine Operator R. Y. Wilson be reinstated to service with seniority and other rights unimpaired, that his record be cleared and that he be paid for all time lost as a result of his dismissal effective October 21, 1981 for failing to follow instructions and insubordination.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, a machine operator on Carrier's Timber and Service Gang No. 16, was suspended from service on October 21, 1981 pending an investigation. He was charged with failing to follow instructions and insubordination.

At the beginning of the work day on October 21st, Claimant was instructed by Supervisor Nicks to operate the Scarifier and to install some teeth on the machine during the day. However, Claimant refused to comply with such instructions. He was so instructed several times. As a result of Claimant several times advising that he was not going to put some teeth in the machine, he was suspended from service.

At the investigation, Claimant asserted that he had not refused to comply with the instructions but merely was advising that it was not possible for him to operate the Scarifier machine and install the teeth.

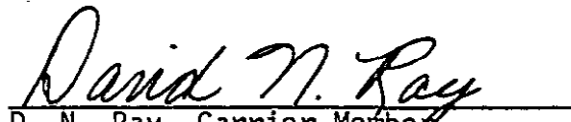
However, the transcript supports the contentions of Carrier and not that of Claimant. That Carrier chose to believe the testimony of witnesses who had testified contrary to Claimant is not inconsistent with its discretionary right. The record shows no abuse of discretion.


Thus there was sufficient evidence adduced to show that Claimant was guilty as charged.

As to the discipline assessed, the Board finds that in light of Claimant's service record, particularly this Board's Award No. 5 issued on April 5, 1980 reinstating Claimant to service, that the assessed discipline was reasonable. This claim will be denied.

Award: Claim denied.

  
Bryce L. Hall, Employee Member

  
D. N. Ray, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued September 10, 1983.