

PUBLIC LAW BOARD NUMBER 3445

Award Number: 9
Case Number: 9

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Track Laborer, D.R. Hill, Post Office Box 485, Purvis, Mississippi, 39475, was dismissed from service for allegedly violating Operating Rule GR-4. Employees request pay for time lost with vacation and seniority rights unimpaired.

FINDINGS:

On June 22, 1982, Claimant was working with Tie Patch Gang Number 3 at Norris Yard in Irondale, Alabama. On that morning, Claimant was instructed by his supervisor, Foreman R.M. Carriker, to pick up some scrap and anchors and carry them to another track for later use. A discussion between the two men ensued concerning whether or not Claimant was required to perform the work as instructed. After failing to persuade Claimant to perform the work, Carriker removed him from service for failure to follow instructions.

As a result of this incident, Claimant was charged with violation of Carrier's Operating Rule GR-4, which states in part that "all employees must follow instructions from proper authority and must perform all duties efficiently and safely." A hearing was held in order to investigate the charge, and on the basis of the evidence adduced during the investigation, Carrier determined that Claimant had violated Rule GR-4 as charged and that he should be dismissed from service. The Organization filed a claim protesting Carrier's actions and requesting that Claimant be restored to service with seniority and all other rights unimpaired, and with pay for all time lost. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause; and if not, what should the remedy be.

The record shows that on the day in question, Claimant was first directed to assist men working under Foreman R.B. Adams with the carrying of crossties. When Adams realized that he had enough men in his crew to carry the ties, he informed Foreman Carriker that he did not require Claimant's services anymore. Carriker then instructed Claimant to pick up some scrap and anchors and carry them elsewhere. Carriker and Track Supervisor J.W. Bently both testified that Claimant refused to pick up and carry the scrap and anchors as directed, and

there has been no suggestion that either of these individuals had any motive for testifying falsely against Claimant.

The Organization argues that Claimant had a legitimate right to question his orders because Carriker did not explain them in a manner that was understandable, and that Claimant was "confused." However, Adams testified that he explained to Claimant that he was not needed anymore on Adams' crew and that he was free to do what Carriker told him to do. It is clear from the record that, rather than being "confused," Claimant simply did not wish to perform the work as directed. His instructions were simple enough, yet he never performed the assigned task.

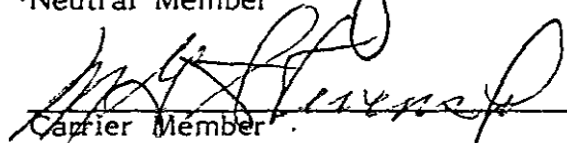
For the reasons stated above, it is the opinion of this Board that Carrier has presented clear and convincing evidence that Claimant violated Rule GR-4 as charged. When this offense is viewed together with Claimant's work record, it must be concluded that Claimant was dismissed for just cause. Accordingly, the claim is hereby denied.

AWARD:

Claim denied.



Neutral Member



Carrier Member



Organization Member

DATE:

Nov. 13, 1974