Award No. 1

MP Files: 304-202
304-206

UTU Files: 1021-1
1021-2

PUBLIC LAW BOARD NO. 807

Parties to Dispute) TEXAS AND PACIFIC RAILWAY COMPANY
and
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

STATEMENT OF CLAIM: "Claim of Clerk H. G. Dennis, Fort Worth-Lancaster Yard, for pay for all time lost until permitted to resume service with all rights unimpaired."

EMPLOYES' STATEMENT OF FACTS AND POSITION: H. G. Dennis, the claimant, was hired as a clerk on April 4, 1969, with the Texas and Pacific Railway Company and was on July 21, 1970, regularly assigned to a clerical position at the Carrier's facility known as Lancaster Yard, Fort Worth, Texas, such position being under the Clerks' Agreement.

He held such position until he was removed therefrom by the Carrier for failure to comply with company regulations relative to personal appearance. The claimant H. G. Dennis contends that his rights were denied under Rule 21(e) of the Agreement between the parties to this dispute which reads as follows:

> "An employee who considers himself unjustly treated otherwise than covered by the rules shall have the same right of hearing and appeal as provided above, if written request is made to his immediate superior within ten (10) days of the cause for complaint."

The claimant strongly insists that he was discharged without a hearing. He further contends that he was not disciplined as required by Rule 21(e) and that the Carrier attempted to negate the Agreement by its actions.

The claimant further charges that because he refused to have his shoulder length hair cut as demanded by the Carrier that his rights, as guaranteed by law and the United States Constitution and Bill of Rights, were thereby

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denied. Mr. Dennis, at the hearing held on November 18, 1971 at Fort Worth, stated that there was discrimination in that other employes of the Carrier are still working who have long hair. He stated that he was willing and able to go back to work at any time but that he would not have his hair cut as required by the Carrier.

Mr. Dennis testified at the hearing that, in his opinion, the company does not have the right to tell an employe how he must look or dress. He stated that the company is required to hire known Nazis and Communists, and that such employes have the right to wear the insignia of such organizations while on duty.

CARRIER'S
STATEMENT
OF FACTS
AND POSITION: The Carrier contended that there had been no violation of the Agreement between the Carrier and the Union. That the claimant had been notified time and time again that his long hair was not in keeping with company policy for personal appearance and safety.

It was agreed that when the claimant was hired he presented a fine appearance; that his hair was neatly cut and with no mustache. At that time he was 21 years of age but when he became 23 he suddenly refused to comply with company policy, asserting that his civil liberty rights were being denied him. There was no question but that the employe was a good worker and very polite. But, says the Carrier, politely obstinate. That he grew a "Manchu" mustache and let his hair grow down to his shoulders. He was called in and told again that he did not meet Carrier regulations and that he must do so if he was to remain at work. For several weeks after he was sent home by the Carrier, he still did not comply with the directive. Then one day he appeared without his mustache and wearing a wig. It was not discovered for sometime that he had pushed his hair up under the wig and that he had in fact never had his hair cut, or it so appeared when 9 months later he was seen with his long free-flowing hair down to his shoulders. Again Dennis was informed that he would have to comply with Carrier regulations. The claimant went to the Superintendent's office several times reporting for work but was adamant that he would not cut his hair, and therefore was withheld from work. The company contends that it made every effort to help Mr. Dennis protect his seniority and service with the Carrier.

On September 10, 1971, the Carrier directed the claimant to report for formal investigation on the charges of failing to maintain an acceptable personal appearance, and for failing to protect his seniority and the service of the company. After the investigation the claimant was found guilty on his own testimony and the testimony of other witnesses. Thereupon Mr. Dennis was dismissed from the service of The Texas and Pacific Railway Company.

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Carrier concedes the right of a man to wear his hair, beard, mustache, etc., as he pleases. But the Carrier strongly argues that it has the right and the obligation to set and administer reasonable standards. They argue that their standards are reasonable, and that a person who refuses to comply with them may not remain in their service; that such people are free to seek other employment where similar standards may not apply.

FINDINGS: This Public Law Board No. 807 finds that the parties herein are Carrier and Employe within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

During the hearing of this Public Law Board the Carrier submitted a copy of Award No. 1 of Public Law Board No. 600 showing that one W. A. Hayes had been dismissed on the same charges as were lodged against the claimant, and Public Law Board No. 600 denied Mr. Hayes' claim for reinstatement and pay for time lost, etc.

Based upon the authority of that and many other decisions cited, and the clear facts as presented to this Board, we must rule that the time lost by the claimant as a result of his failure and refusal to comply with company standards, which we rule are reasonable, was of his own making. Clearly he had a proper remedy. He should have had his hair cut (as he had done when he applied for employment) and then made a grievance as a result of being so required. In this way he would not have lost any time, but the claimant took things into his own hands and even resorted at one time to trickery to make it appear that he had made compliance. The Superintendent said that he did not know that Mr. Dennis had a wig when he re-applied for work and that Mr. Dennis had even brought an envelope with some hair in it to show he had cut his hair. This, of course, was not true according to subsequent events.

The Union expressed great concern over what they were afraid might happen with respect to setting "unreasonable standards." But we find the standards in question to be reasonable and we cannot deal in conjecture. Since this case was brought to the Board under the provisions of Section 3 of the Railway Labor Act, there is no reason to believe that the Union could not do the same thing if they consider any other standard prescribed by the company to be unreasonable.

Quite naturally the Union expressed concern that the rules of the collective bargaining agreement might be ignored or in some way damaged by the actions of the Carrier. We do not share this fear, for nothing in this opinion would in any way change their rules. We feel there is a difference between where the company arbitrarily dismisses some person in violation of Rule 21 and a case in which an employe is responsible for his loss of time by refusing to comply with reasonable standards. The facts in this case are one of willful actions on the part of the claimant and he was given every

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opportunity to hold his job. This decision in no way negotes any rule of the collectively bargained agreement.

There is a valid principle of law that no one is required to perform a useless act. We are sure that claimant knew exactly why he was being withheld from service. Certainly, he knew it the first time it happened, because he faked having had his hair cut to an acceptable length and was immediately allowed to return to work. He cannot be heard to argue he didn't know what the trouble was the second time around. Furthermore, the record shows he was fully informed, verbally and in writing. There was, in fact, a formal investigation after the Carrier became thoroughly convinced claimant would never perform service except on his own terms and conditions. It was only after that investigation and a finding of guilt that claimant was actually disciplined. There was no reason to hold another hearing as claimant requested - for the purpose of seeking out the reason why he was not being allowed to work. He knew the reason. He had every chance in the world to keep from being dismissed.

However, we feel that we must make it clear to the Carrier that this line of distinction may not, and undoubtedly will not, always prevail, and that the Carrier travels at its own risk in declining hearings when properly requested under Rule 21(e). This case is simply an exception to that rule.

The only question that is left to be answered is whether the discipline as assessed was excessive. We must state that the record is completely barren of any ground on which this Board could find that the Carrier abused its discretion in dismissing the claimant from its service. We must keep in mind that the company did permit this claimant to return to work for about 9 months, and the Carrier, in good conscience, did believe that the claimant had complied with the company's reasonable standards. What happened to this claimant has been on his own making and this Board must find that the claim be denied in its entirety.

AWARD: Claim denied.

Walter L. Gray
Walter L. Gray, Chairman

J. W. Taggart, Jr.
J. W. Taggart, Jr., Organization Member

O. B. Sayers
O. B. Sayers, Carrier Member

St. Louis, Missouri
December 7, 1971