

Award No. 5
S.B.A. Case No. 5
(Third Division Docket No. 9602)

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT

OF CLAIM: "Claim of the System Committee of the Brotherhood that:

- "(1) The dismissal of Sectionman Henry T. Archuleta from service on December 25, 1955, was without just and sufficient cause and in violation of the effective Agreement;
- "(2) Sectionman Henry T. Archuleta be restored to service with seniority and vacation rights unimpaired and reimbursed for all wage loss suffered in conformity with Rule 40 (d) because of the violation referred to in part (1) of this claim."

FINDINGS: Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The Carrier and employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

Claimant's insubordination or refusal to obey instruction in this case, for which he was discharged, was not exactly a refusal to work or perform his work as directed, but a refusal to ride in the rear of a jeep loaded with tools over wet, snowy and bumpy roads.

As offenses go, and comparing it with the grounds for discharge in other cases, it should not be classed in the category of serious offenses. We find his dismissal and loss of pay from December 25, 1955, to September 27, 1956, was arbitrary and disproportionate to the offense.

Claimant was reinstated September 27, 1956, with seniority and other rights and without prejudice to his claim, and thus his loss of work extended over nine months only, but we do not believe his offense to be the type for which an employee should lose his livelihood for nine months.

We have serious doubts as to the reality of the alleged safety hazard as presented by the organization. Claimant's action could well have been motivated by some fear for his safety and to this extent is justified, but it appears to have

been motivated also by the discomfort involved. We see some mitigating circumstances in the case.

Although we may be charged with substituting our judgment for that of management as to the proper measure or degree of discipline, in view of our opinion that the discipline was arbitrary and disproportionate, we find that claimant should be reimbursed for the time lost, less one month's wages.

AWARD:

Claim sustained in part and denied in part. Claimant will be restored and reimbursed for time lost, less one month's wages.

SPECIAL BOARD OF ADJUSTMENT NO. 313

(s) Marion Beatty

Marion Beatty, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Organization Member

(s) A. D. Hanson

A. D. Hanson, Carrier Member

Omaha, Nebraska
June 10, 1960