

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 33
Docket No. 39

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The dismissal of Machine Operator S. Silquero for alleged insubordination on September 20, 1983, was without just and sufficient cause, arbitrary and capricious. (Organization File 3D-4099; Carrier File 81-84-44-D).
- (2) Machine Operator S. Silquero shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employee and the carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Claimant, prior to his dismissal, was employed by the Carrier as a machine operator, operating an anchor machine in the vicinity of Standard City, Illinois, under the supervision of Anchor Gang Foreman Domingo Contreras. On September 21, 1983, he was notified to attend formal investigation on the charge:

"To determine your responsibility for your insubordination when you failed to perform your duty as directed by your foreman when you refused to perform any work on September 20, 1983, while working with the anchor Gang in the vicinity of Standard City, Ill."

A transcript of the formal investigation has been made a part of the record. In the investigation evidence was presented that claimant refused to operate anchor machine when instructed to do so by his foreman, and refused to apply anchors with an anchor wrench when instructed by his foreman, as result of which he was removed from the service. Claimant admitted that he did not comply with the instructions of the foreman, but contended that his reason for such action was inclement weather conditions - raining. It was established

that the remainder of the gang continued working for about one hour after claimant's refusal. The foreman described the rain as light; stated that claimant had a rain coat, and that the gang encountered no difficulties in applying anchors.

In Third Division Award No. 22798, it was held:

"It is well settled that employees must comply with instructions of their superior officers and complain later if they consider that they have been mistreated, except where a real safety hazard may be involved. If an employee contends that a safety hazard is involved, then the burden is on the employee to prove that such situation actually exists."

We find from the record before us in the present dispute that claimant has failed to prove that a real safety hazard existed at the time of his refusal to comply with the instructions of his foreman. Adverse weather conditions are nothing more than an occasionally unfortunate condition of work, especially in track maintenance. We find that claimant was guilty of insubordination. Severe discipline was warranted; however, we consider permanent dismissal excessive; taking into consideration claimant's satisfactory record during his five years of service. The time that claimant has been out of service should constitute sufficient discipline. We will award that he be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service. Claimant should understand that the purpose of the award is to give him one last chance to become a satisfactory and valued employee, and that further major infractions on his part will receive short shrift.

A W A R D

Claim sustained to the extent indicated in Findings.

ORDER

The Carrier is directed to comply with this award within thirty days hereof.


Chairman, Neutral Member


Carrier Member


Labor Member

Dated: April 16, 1985.