

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood of Locomotive Engineers
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Engineer G. J. Zalesny, Eastern Division (Wisconsin District) was investigated on October 20, 1989 on the following charge:

'Your responsibility for your failure to comply with instructions issued to you by the North Dispatcher when you were instructed to operate GBPRA in aggregate service upon your arrival at Butler, WI on Train BLOKC, Extra 6827 West, and your failure to comply at approximately 3:00 A.M., Saturday, October 14, 1989.'

Following the investigation, claimant was dismissed from service. However, claimant was later returned to service without compensation making his first trip on March 15, 1990 operating Train PRGBB. Therefore, claimant requests that this Board expunge the discipline from his record and compensate him for all time lost from the day he was held from service, October 14, 1989, until his return to service on March 15, 1990. Claim premised on BLE Rule 41, copy attached as Employees' Exhibit A. Transcript attached as Employees' Exhibit B."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Following an Investigation conducted on October 30, 1989, on a charge that Claimant refused to comply with instructions issued by the Dispatcher that he operate in aggregate service, Claimant was dismissed effective November 9, 1989. On March 15, 1990, he was reinstated. The Organization asks that references to this discipline be expunged from Claimant's service record and that he be paid for all time lost.

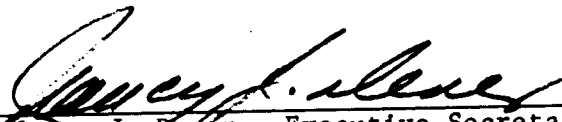
Review of the record develops that no procedural defects exist so as to flaw the Investigation. Moreover, ample evidence is present demonstrating that Claimant flatly refused to remain available and operate in aggregate service even though he had 4 hours and 45 minutes left to remain legal under the Hours of Service Act. Claimant left the property and went home, while the remainder of the Crew stayed on duty. The trip that Claimant refused was delayed over four hours awaiting an Engineer. Claimant's excuse that he was ill was only advanced well after he was suspended from service and is not persuasive. Accordingly no other conclusion can be reached except that Claimant's conduct was insubordinate.

Insubordination, in and of itself, is sufficient grounds for permanent separation from service. Claimant, however, has been restored to service, thus his dismissal has been converted to a lengthy suspension. After review of his disciplinary record, which contains 4 letters of reprimand, 3 deferred suspensions totaling 50 days and 2 actual suspensions totaling 55 days, we do not find the discipline now before us excessive or inappropriate. It will not be disturbed.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest: 
Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois this 3rd day of October 1991.