

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32348  
Docket No. CL-32883  
97-3-96-3-228**

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(Chicago, Central & Pacific Railroad Company)

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-11210) that:

1. Carrier violated the Agreement between the Parties, namely Rules 24 and 35, among other rules of the Agreement, beginning September 8, 1995, when Clerk Kevin J. Dahm was removed from service of the Carrier; and
2. Carrier shall now be required to reinstate Clerk Dahm to service with all seniority rights unimpaired; to compensate him for all time lost since September 8, 1995, including health and welfare insurance premium payments, the same as if Clerk Dahm had worked.
3. Carrier shall clear Clerk Dahm's work record of the matters pertaining to the investigation.”

**FINDINGS:**

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

On July 31, 1995 Chief Caller S. Bracken called the Claimant to assign him to cover a position in Waterloo, Iowa, on August 1. Bracken called the Claimant, an eight year employee serving as an Extra Clerk whose headquarters was Waterloo, Iowa, at that time to give him adequate notice because he was living in Freeport, Illinois, approximately 165 miles from Waterloo. When Bracken informed Claimant of the assignment, Claimant became argumentative and asserted that he was not required to protect the Waterloo assignment. He then stated that he would not do so. Bracken then asked Manager of Labor Agreements D. D. Halterman to join their telephone conversation via the speaker phone, informing the Claimant that he was doing so. When Bracken repeated the assignment, the Claimant again objected, this time citing a fax that he had sent that same day to Manager of Station Operations P. A. Bear objecting to his designation of Waterloo as his headquarters. At that time Bear joined the speaker phone conversation. When Halterman again ordered the Claimant to protect the Waterloo assignment he became argumentative and quarrelsome, ending the conversation by telling Halterman that he could "kiss my ass." The following day, August 1, the Claimant did not protect the Waterloo assignment. Instead, he requested that he be put in furlough status.

The instant matter involves the application of the long-held doctrine that employees should "obey now, grieve later" the orders of management. However, it is equally well-settled that there are exceptions to that general rule if the order places the employee in some danger or is otherwise unreasonable. There is no argument by the Organization that health and/or safety is at issue; therefore, the only possible basis for excusing the Claimant's failure to protect the Waterloo assignment is if the order was somehow unreasonable.

On this point the Organization makes three arguments. First, the Organization contends that the designation of the Claimant's headquarters as Waterloo in the first instance violated the Agreement, asserting that the Claimant's "overriding rights" in this regard is an exception to the "obey now, grieve later" rule. We disagree, for the simple fact of the matter is that if an alleged contract violation could serve as an excuse for employees to disregard the orders of management, the exception would swallow up the rule. The second alleged basis for not applying the "obey now, grieve later" rule is that the assignment to Waterloo was some form of pretext to harass the Claimant. On this point the Organization, as the proponent of the claim, bears the burden of proof.

However, all evidence on the record discloses that the reasons for the assignment were part and parcel of the Carrier's decentralization efforts. More importantly, the Organization failed to rebut this evidence. Rather, its only argument is that the Carrier did not ultimately fill the position in question after the Claimant failed to protect it. Although this fact does raise some doubt, it is not in the opinion of the Board, sufficient to meet the Organization's burden of proof. The final basis asserted for overturning the dismissal is that the Claimant was provoked to tell Halterman that he should "kiss my ass." We do not share this conclusion. A close examination of the content of the conversation in question leads us to conclude that, at most, Halterman and the other Carrier representatives were nothing more than forceful.

Although discharge is a severe penalty, indeed the ultimate penalty, insubordination is no minor matter. This is particularly true where employees possess a recourse to contest management action when faced with reasonable orders that do not place them in danger, but that they believe to be inappropriate. Moreover, the record reflects that the Claimant has demonstrated a propensity to reject management directives. Thus, we cannot conclude that if he were reinstated he would understand, appreciate, and comply with the "obey now, grieve later rule."

### AWARD

Claim denied.

### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of November 1997.