

Referee Harold M. Weston

PARTIES' Railroad Yardmasters of America
TO
DISPUTE: Penn Central Transportation Company

STATEMENT OF CLAIM: Claim and request of Railroad Yardmasters of America: -
System Docket No. 306 - Philadelphia Division Case No. 2/69
"Disqualification of W. R. Boyer."

OPINION OF BOARD: Claimant was disqualified as yardmaster effective December 31, 1968, on the ground that he failed to comply with Trainmaster Bishop's instructions to have the yard crew assist Train PR-3 out of 44th Street Yard that night.

Claimant's own testimony shows that he received those instructions from Bishop but did not order the yard crew to assist Train PR-3 although he had sufficient opportunity to do so. He testified that "using my own discretion and own judgment, I decided that the large engine would be better and it would do a more thorough job."

While there is no question but that Claimant failed to use the yard engine to assist Train PR-3 as he was directed to do, this record does not support such substantial discipline as disqualification or a 29 day suspension without pay for an employe with an unblemished record of 18 years service. Claimant did not refuse to carry out the order and did get Train PR-3 out of the yard without delay or damage. He should have used the yard engine to accomplish the work in line with the trainmaster's instructions and should be subjected to a formal reprimand for his failure to do so, even though, according to his uncontroverted testimony, Carrier's Movement Director had informed him that the bigger engine should be used.

Failure to comply with a superior's instructions in all respects is a serious offense that warrants discipline and our conclusion that disqualification or a 29 day suspension would be arbitrary and excessive discipline is based upon, and limited to, the specific facts of the present case.

Carrier contends that Claimant is not entitled to reimbursement for wages lost during the period of his disqualification since he could have exercised his seniority under the Clerks' Agreement and thus mitigated damages. This point is unpersuasive. While the principle of mitigation is sound, there is no evidence that Claimant could have obtained a position that was reasonably consistent with his years of service and experience. Where Carrier raises the question of mitigation, it should show exactly what opportunity for employment was available and rejected.

The discipline administered to Claimant will be reduced to a formal reprimand and Carrier's records will be modified accordingly; Claimant will be reimbursed for all wages lost during the period of disqualification.

FINDINGS:

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

The carrier and the employes involved in this dispute are respectfully carrier and employe 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.

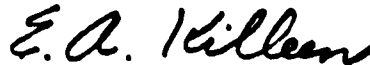
The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division, with the Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained to the extent indicated, supra, in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:



E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 5th day of November, 1971.