

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 5332

Parties to Dispute:

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

-and-

NORFOLK SOUTHERN RAILWAY
COMPANY

AWARD

Case No. 178

Claimant J. Trautwein

STATEMENT OF CLAIM:

“Claim on behalf of Electrician Jason Trautwein in Bellevue, Ohio, for reinstatement with seniority rights unimpaired and made whole for all losses sustained. These begin the date removed from service, continue to the present date and include, but are not limited to, lost wages, vacation rights, health and welfare and insurance benefits, pension benefits such as Railroad Retirement and Unemployment Insurance, and any other benefits that would have been earned during the time Electrician Trautwein is unjustly withheld from Carrier’s service. We also request his personal record be cleared of the matter.”

FINDINGS:

The Board finds that the parties herein are Carrier and Employee as defined by the Railway Labor Act, as amended; that the Board has jurisdiction over this dispute; and that due notice of the hearing thereon has been given to the parties.

Following formal investigation conducted on July 19, 2018, Claimant Trautwein was dismissed from service on September 12, 2018. Carrier’s grounds were as follows:

“Your conduct unbecoming an employee in that you were insubordinate when you failed to follow the instructions given to you by General Foreman E. Evans at approximately 2:45 PM on June 13, 2018, to go with the rest of the LCDI crew to check on the 13Q located on Potter Road, while assigned as an electrician on the first shift (7:00 AM – 3:00 PM) at Bellevue Locomotive Shop, Bellevue, Ohio.”

According to the hearing transcript before the Board, at around 2:41 PM on June 13, 2018, Carrier’s Charging Officer Evans was alerted that a crew needed to go to Potter Road to deal with a locomotive which had run through a frog near the fuel pad. Carrier’s

LCDI truck for road trips out of the Bellevue Locomotive Shop normally consists of a machinist and an electrician. Upon conferring with Machinist Steven Joseph at the site and reviewing plans for the work, Joseph informed him that he would be working the job alone. Asked why, Joseph replied that Claimant Trautwein “didn’t want to go.” When Evans engaged Claimant at the inbound office to inquire why he would not be going with Machinist Joseph, the following exchange ensued:

“Q: And what did you say with him? How did that conversation go?

A: I approached Mr. Trautwein and asked him why he wasn’t going with Mr. Joseph. At that time, he informed me that he had an appointment.

Q: Did he say anything else other than he had an appointment?

A: He did make the suggestion that I get somebody from the shop to go if I had a problem with him going by himself.

Q: And what did you say to Mr. Trautwein at that time?

A: I was instructed to get the LCDI crew to this 13 Q and that I needed him to get in the truck with Mr. Joseph.

Amplifying on the foregoing, Mr. Evans adds that upon being told he had been instructed to instruct an LCDI crew to check the 13Q and he was part of that crew, Claimant responded, saying “We send one man crews all the time.” “I don’t want to start an argument with you, but you can get someone from the shop if you want someone to go with him.”

Confirming that testimony, Senior General Foreman Troye Orlick testified that although he did not hear Claimant’s earlier exchange with Evans, he was present at the meeting with Evans and Claimant in the office, and that in response to his questions regarding why Claimant had not gotten on the truck for the road trip, Claimant indicated that “they could’ve sent somebody else with lower seniority.” Orlick states that Claimant never attempted to explain that he had an appointment in the meeting in the office.

Claimant testified that he told Evans he had an appointment, but never got a chance to explain that he had to pick up his granddaughter. “I wasn’t refusing to go. I just said that I needed to be back here at the shop to leave at 3.” According to Claimant, before Evans met with him he had already called the SGL in the tower to inquire what the trip involved, since the trip sheet contained only general information. Advised that “a plow was dragging,” he inquired of Joseph if he would like to go alone because he had to pick up his granddaughter directly after his shift ended at 3:00 PM. Joseph stated that he had no

problem. According to Claimant, one person on a road trip is not uncommon, and in this instance the work in question did not involve electrical issues.

The record evidence on whether or with what specificity Claimant identified the nature of his appointment is conflicting.¹ Carrier argues that Claimant never described specifically what his problem was. But even if that argument is credited, it is undisputed that events happened rapidly. The time lapse from when Mr. Evans was alerted to the need for a crew and when Claimant was taken off the clock was brief, from 2:41 PM at 2:45 PM. And it seems apparent that Carrier's action surprised Claimant, since according to Evans he wanted to argue the point.

Neither of these sophisticated parties needs reminding of the basic underlying principles in play: If management has the right to manage, it has the authority to issue directives and orders. And employees have an obligation to comply, absent several exceptions not implicated here. While workplace relationships have moved miles away from the master-servant culture, the risks to the welfare of both Parties posed by any other template are hard to overstate. Accordingly, if any employee wants to dispute legitimate orders, the mantra is obey and grieve, and deliberate refusals to obey orders are extremely serious offenses. Here, as an apparently long time military veteran and no stranger to rank and order, Claimant himself had special reasons to be familiar with and comply with those basic standards.

It is messy but true. Insubordination cases rarely implicate boilerplate factual scenarios centered on direct defiance of management orders followed by notice that continued refusal to comply will result in discipline or discharge. In the real world, matters are context dependent and rarely that streamlined. Among the awards offered by Carrier are those emphasizing that the railroad workplace is not a debating society. But it is always helpful to know if the employee explained himself? Did he ask questions? Did he try to offer a reason? Did management take a moment to explain why it needed what it was ordering?

¹ Claimant's co-worker Gills, who did not testify, provided a written statement indicating that "...Evans instructed Jason that he had to go on the road trip. Jason explained he had an appointment directly after work he had to attend. Jason asked Mr. Evans if they could pull someone out of the shop or force someone with lower seniority to go instead. Jason explained several times he had an appointment he had to attend. I (myself) never heard Jason say he was not going on road trip."

In this dispute, it seems obvious that Claimant did in fact not immediately comply with instructions to take the road trip. It further is reasonably established that he at no time ever clearly mentioned the exact reasons for his reluctance to take the trip in his exchange with Evans. “And then when Erik came in...I said I had an appointment. I mean, he didn’t give me a chance to explain what the issue was. He just said, go, go, go, and I said I had an appointment. I had to leave at 3. I wasn’t refusing to go. I just said I needed to be back here at the shop to leave at 3...”

Balancing the likelihood that Claimant may have had sufficient opportunity disclose that information, since he had time to argue about sending another employee, events moved quickly. Carrier acknowledges it never inquired regarding the reasons for his reluctance to leave, and concedes the policy of two men on an LCDI truck may be flexible; that there are times when a truck can be sent with only one man; and that relatively junior supervisors here were attempting to comply not with a fixed rule but with what was cited as “common practice.”

In partial support for the severity of its discipline, Carrier cites what it suggests is a lengthy pattern of Claimant’s failure to follow instructions. In our view, while hardly favorable to his position here, beyond several old safety and cell phone violations and incidents involving leaving his assigned work area without permission (one 19 years ago, one 10 years ago and one in 2017), his service records over a 20-year period reflect no serious discipline and none whatsoever implicating a pattern of hostility to authority.

It is, on balance, a close case. There is a distinction between willful act of insubordination and the facts presented. As we scan the horizon, the overarching impression is of a man who at least on this afternoon just didn’t get it, his personal needs elbowing those of his employer. In a vacuum, it is not hard to understand Carrier’s frustration and sharp response. But the time pressures; both parties’ failure to even momentarily explore the other’s legitimate needs; and Claimant’s considerable seniority trigger a ponder moment on the severity of the discipline. There is nothing inappropriate about discharge for a first offense of insubordination, but in this instance it puts off a faint whiff of overreaction. We conclude on balance the conduct at issue may not have been as outrageous as now argued.

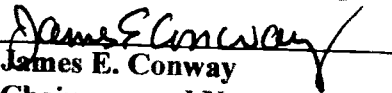
OPINION AND AWARD


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For the foregoing reasons, the Board will direct Carrier to convert the discharge to a disciplinary penalty and offer Claimant reinstatement at the earliest possible time. Restoration to service shall be without backpay or benefits but with seniority intact and subject to a Last Chance Agreement setting forth a clear understanding that any repetition of similar behavior in the future by Claimant will result in his immediate dismissal.

A W A R D

The Claim is partially sustained in accordance with the Opinion.


James E. Conway
Chairman and Neutral Member


Tom Owens
Employee Member


Tara Arnett
Carrier Member

Dated: January , 2020