

Award No. 1659

Docket No. 1561

2-RyEx-MA-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

**INTERNATIONAL ASSOCIATION OF MACHINISTS
RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.**

RAILWAY EXPRESS AGENCY, INC.

DISPUTE: CLAIM OF EMPLOYEES: That under the current agreement Machinist J. C. Peacock was unjustly dismissed from the service on June 16, 1951 and that accordingly the carrier be ordered to restore this employe to all service rights with compensation for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed Machinist J. C. Peacock, hereinafter referred to as the claimant, on May 5, 1945, at its Jacksonville, Florida, garage. The claimant's assignment of hours was from 8:00 A. M. to 4:30 P. M.

The carrier summoned the claimant to appear for a formal investigation at 10:00 A. M. Monday, July 2, 1951 and this is affirmed by letter addressed to the claimant by the carrier's superintendent dated June 27, 1951, copy submitted herewith and identified as Exhibit A.

The investigation was held as scheduled and a copy of the transcript is copy submitted herewith and identified as Exhibit B.

The carrier elected four days after the investigation was held to dismiss the claimant from its service and this is confirmed by letter addressed to the claimant by the carrier's superintendent dated July 6, 1951, copy submitted herewith and identified as Exhibit C.

The claimant and his representative believed that the carrier's dismissal of the claimant was in error and consequently the parties conducted another investigation on Tuesday, August 28, 1951, and a copy of the transcript thereof is copy submitted herewith and identified as Exhibit D.

The dispute has been handled with the proper officers of the carrier from the bottom to the top with the result that the highest designated officer to handle such dispute has declined to adjust it on any acceptable basis which

FINDINGS: The Second 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 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 were given due notice of hearing thereon.

Claimant was dismissed from the service on July 6, 1951, for making a physical attack upon his foreman on Sautrday, June 16, 1951. The claim is for reinstatement of all service rights and pay for all time lost since June 16, 1951.

The record discloses that on June 16, 1951, Mechanic J. C. Peacock assaulted his foreman, C. G. Hipp, causing severe physical injury to the latter. The assault originated in the carrier's garage where both worked. It was resumed by Peacock a few minutes later on the side walk in front of a nearby restaurant. The record is lengthy and complete. We can only give the conclusions which the evidence justifies and apply controlling rules thereto.

The evidence shows that Peacock was the aggressor. He not only struck the first blow but there is no evidence that Foreman Hipp ever struck Peacock at all. The injuries to Hipp were substantial. He was in a semi-conscious condition when the second altercation was stopped. There is evidence in the record that Peacock struck Hipp with a heavy duty pull socket at least once and with his fists several times. There is also evidence that the attack was premeditated by Peacock and that he came to work with the intention of "beating up" Foreman Hipp.

There is evidence by claimant that Foreman Hipp had been "riding" him. There are other statements to the effect that while Peacock was a very good workman, his disposition was not always good and at times he was hard to get along with. It is evident, also, that he was victimized by tale bearing employes who incited him against Foreman Hipp. But even so, the conduct of Peacock cannot be justified. If Peacock had a grievance, the agreement and the processes of the Railway Labor Act provide the remedy. He will not be permitted to resort to the methods employed in the present case with impunity. Discipline is necessary to obtain efficient and orderly conduct of railroad operations. It is necessary also to protect fellow employes and supervising officers from physical violence by those who are disposed to settle their difficulties by such means. Every right under the agreement appears to have been accorded the claimant, including a fair hearing in which the facts were fully developed. We fail to find any reason for interfering with the action of the carrier in dismissing the claimant from the service.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 20th day of March, 1953.