

Award No. 2344
Docket No. 2204
2-GTW-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 92, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)

GRAND TRUNK WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That effective May 18, 1955, the Carrier unjustly dismissed Coach Cleaner Carolyn Woodward under the terms of the current agreement.

2. That accordingly the Carrier be ordered to reinstate this employe with her seniority rights unimpaired and be paid compensation for all time lost since May 18, 1955.

EMPLOYEES' STATEMENT OF FACTS: Coach Cleaner Carolyn Woodward, hereinafter referred to as the claimant, was employed by the Grand Trunk Western Railroad Company as a coach cleaner November 11, 1946 at the Brush Street Coach Yard, Detroit, Michigan.

Under date of May 24, 1955, the claimant was notified to appear for hearing at 9:00 A. M., Friday, May 27, 1955, car foreman's office, in connection with altercation between Clarence Allen, a retired Grand Trunk Western employe, and herself in the car department storeroom, Detroit, Michigan, at 1:40 P. M., May 18, 1955.

Hearing was held as scheduled and claimant was discharged effective May 18, 1955.

This dispute has been handled as provided for in the current agreement, up to and including the highest officers designated by the carrier to handle such appeals, who have declined to adjust the claim.

POSITION OF EMPLOYEES: The claimant believes she was unjustly dealt with when dismissed from the service effective May 18, 1955, and, accordingly, a grievance was progressed under the provisions of Rule 29 in order that this question would be resolved either on the property or by your Honorable Board.

It was the carrier's judgment, after considering all the facts in the instant case, that Mrs. Woodward should no longer be retained in the service. The question between her and Clarence Allen was no justification for the violence of her attack on him. The carrier cannot tolerate such actions on the part of its employees; in the present case the attack occurred on company property and in close proximity to the passenger station. It is mere chance that the encounter did not take place in the train shed, where the coach cleaners perform many of their duties, and where the traveling public passes through. If Mrs. Woodward had not been forcibly restrained by the assistant car foreman, it is likely she would have inflicted serious injury upon Allen, who is an aged man in poor physical condition. Several recent Second Division N.R.A.B. awards have declined to reverse carrier's disciplinary action in discharging employees guilty of fighting or brawling on company property, See Awards 1659, 1687, 1812, and 1831. The carrier's disciplinary action was taken in good faith, after an investigation in which claimant was given the opportunity to bring out whatever extenuating circumstances there might have been in the case. The offense was a serious one. The Second Division has frequently stated that it would not disturb carrier's disciplinary action unless such action is clearly unjustified. In Award 1817 it held as follows:

"We adhere to the rule that if the evidence is substantial and supports the charges we will not disturb the findings unless it is affirmatively made apparent to us that the carrier's action is so clearly wrong as to amount to an abuse of discretion."

FINDINGS: The Second 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.

The parties to said dispute were given due notice of hearing thereon.

Claimant was employed as a coach cleaner at carrier's Brush Street Yard, Detroit, Michigan. On May 27, 1955, claimant was given an investigation on the charge of creating an altercation between herself and one Clarence Allen in the car department storeroom. On June 10, 1955, claimant was discharged from the service of the carrier. Claimant has appealed to this Board alleging unjust treatment and requesting reinstatement with seniority rights unimpaired and pay for time lost.

The record shows that claimant was a woman, 42 years of age, employed as a coach cleaner. Clarence Allen was a former employee, 61 years of age, who had been retired because of physical disability. It appears that Allen came into the car foreman's office looking for the claimant whom he claimed owed him \$35.00. The car foreman sent for claimant and left his office to keep an appointment. Claimant came to the foreman's office, was informed of the reason for the call and returned to the car department storeroom where Allen was waiting. A Mrs. Peters who was on duty in the storeroom described the incident substantially as follows: Claimant (Carolyn Woodward) told Allen he had been telling lies about her and that she did not owe him any money. An argument with much name calling ensued. Claimant started toward the door at which time she took a 1¼" by 11" nipple from the shelf and struck Allen with it. He struck back with a light cane he was carrying. The fight continued until Mrs. Peters called Coach Foreman Harry Gerhold who stopped it. The record is clear that claimant started the argument and struck the first blow. The evidence generally sustains the foregoing version.

The evidence is sufficient to sustain carrier's conclusions in the matter. The carrier is justified in protecting fellow employees, the travelling public and

even trespassers from such unwarranted assaults. In fact, it has a duty to do so. There is nothing in the record indicating that the carrier was arbitrary or capricious in its decision. Being supported by evidence, the findings of the carrier will not be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.