Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6604
Docket No. 6442
2-SPT(PL)-CM-'73

The Second Division consisted of the regular members and in addition Referee Louis Yagoda when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen).
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employes:

1. That under the current agreement Carman L. J. Matthews hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of August 4, 1972 after eighteen (18) months service with the Carrier.

2. That the Carrier be ordered to:

(a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired and be compensated for all time lost retroactive to July 10, 1972 when he was removed from service pending hearing and subsequently dismissed on August 4, 1972.

(b) Grant to the Claimant all vacation rights.

(c) Assume and pay all premiums for hospital, surgical and medical benefits, including all costs for life insurance.

(d) Pay into the Railroad Retirement Fund maximum amount that is required to be paid an active employe, for all time he is held out of service.

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.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant is charged with violations of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company; the relevant portions of that rule read, "Employes will not be retained in the service who are ... insubordinate ... quarrelsome or otherwise vicious ...". The Claimant was given adequate notice of the hearing, and an adequate opportunity to prepare his defense, and to cross-examine all witnesses.

Carrier introduces generally consistent evidence concerning the incident on July 10, 1972, during which Claimant admits to having struck Foreman Rose. The only witnesses to the incident are the participants themselves, and their testimonies conflict as to the important questions of provocation and self-defense. Claimant was questioned immediately after the incident, and, at that time, did not assert that he was acting in self-defense of his person, but only that "... no man can treat me like that ...", and that Foreman Rose had grabbed the telephone from his hands. These statements do not indicate that Claimant acted in self-defense, as justification for his admitted attack upon Foreman Rose. Claimant had an opportunity to introduce some evidence to verify his contention that Foreman Rose grabbed the telephone and terminated his unfinished call to Mr. Jerry Brice. Employes could have presented Mr. Brice to prove that the call had been abruptly terminated, but failed to do so.

The standard of proof in a hearing to determine the validity of a discharge requires Carrier to show substantial evidence in support of its action. "Substantial evidence means relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consol. Ed. Comp. vs. Labor Board, 305 U.S. 197,229. The testimony at the hearing was sufficient to meet this test, and Awards from every Division of this Board do not permit us to substitute our judgment for that of the Carrier where there is substantial evidence of the offense committed (Award No. 6281, Second Division McGovern, 1972). It is for the trier of the facts to determine the credibility of the witnesses, and the conflicts in the testimonies of Claimant and Foreman Rose have been resolved by the hearing officer in favor of Carrier. Mere resolution of these conflicts in favor of Carrier is not sufficient grounds to sustain Employes' claim, and thereby reverse the hearing officer's decision.

The testimony at the hearing produced substantial evidence of a violation of Rule 801. The evidence was not adequately refuted by the Employes and the finding of the hearing officer is reasonably based upon the record. The claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch

Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 29th day of November, 1973.