

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Coach Cleaner Robert Hopkins was unjustly dismissed from service on August 27, 1975.
2. The discipline administered to Coach Cleaner Robert Hopkins was unreasonably harsh and excessive.
3. That the Chicago and North Western Transportation Company be ordered to restore Coach Cleaner Robert Hopkins to service with seniority unimpaired, reimburse him for lost wages dating from August 5, 1975, and make him whole for all benefits he would have been entitled to had he remained in 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 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.

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

Claimant Robert Hopkins was employed as a Coach Cleaner at the Carrier's Chicago Passenger Terminal. By letter dated August 5, 1975, from Mr. James O. Chase, Jr., Manager Car Department Passenger, the Claimant was notified to appear for an investigation to be held on August 19, 1975. In the same letter, the Claimant was notified that he was to be held out of service pending the investigation. The charge placed against the Claimant was as follows:

"CHARGE: Your responsibility for your having used profane language towards a Supervisor in that on Monday, July 28, 1975, you cursed and made an obscene gesture to your foreman."

The investigation was held as scheduled and, by letter dated August 27, 1975, from Mr. Chase, the Carrier terminated the Claimant's employment.

The Organization contends that the suspension prior to the hearing was improper since the matter involved was not an extreme case as required by Rule 35. We find that the alleged conduct contained in the charge was sufficiently extreme to allow the Carrier to suspend the Claimant pending the investigation. Should the Carrier have failed to prove the alleged misconduct of the Claimant at the investigation, Rule 35 would require that the suspended employee be returned to service and paid for all regular time lost.

The Organization contends that the Claimant was not guilty of the charge. The Board finds that substantial evidence of record supports a finding of culpability on the part of the Claimant. We find then that the charge was proven by the Carrier. The discipline of dismissal is not arbitrary, capricious or excessive in view of the seriousness of the proven charge and in view of the Claimant's poor employment record. We shall deny the Claim.

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 5th day of July, 1977.