

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That Carrier improperly dismissed Machinist O. Matlock (Hereinafter referred to as Claimant) from service on March 6, 1981.
2. That Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired and with compensation for all wage loss from date of dismissal to date of restoration to 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 employees 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, O. Matlock, was dismissed from service on March 6, 1981. He had been employed by the Carrier as a machinist at Omaha, Nebraska, on the 4 p.m. to 12 a.m. shift. His last day of employment by the Carrier was February 19, 1981. The Carrier charged Claimant with insubordination and using vulgar and abusive language based upon Supervisor C. T. Palmer's accusation that Claimant addressed Palmer using vulgar language when Palmer accused Claimant of working in an unsafe manner.

The Carrier charged Claimant with violating General Rule B and Regulations 700, 701, and 702 of Form 7908 regarding duties and deportment of employees, safety instructions, and the use of radios. Those rules state:

"Rule B: Employees must be conversant with and obey the rules and special instructions. If in doubt as to their meaning, they must apply to proper authority of the Railroad for an explanation."

"Rule 700: Employees will not be retained in the service who are careless of the safety of themselves and of others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who do not conduct themselves in such a manner that the Railroad will not be subjected to criticism and loss of goodwill, or who do not meet their personal obligations."

"Rule 701: Courteous, orderly conduct is required of all employees. Boisterous, profane, or vulgar language is forbidden.

"Rule 702: Employees must report for duty at the designated time and place. They must be alert and attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties, or substitute others in their place without proper authority."

The Organization charges that the Claimant was improperly dismissed and seeks his reinstatement. The Organization argues that there is no corroboration of the allegations of Claimant's vulgar language made by Supervisor Palmer. Moreover, the Organization contends that the Claimant testified he had been subjected to harrassment by Carrier supervisors while on the job, which raises a question as to the credibility of the Supervisor's allegations.

At the hearing, Supervisor Palmer testified that at approximately 7:30 p.m. on February 19, 1981, he went to the area where the Claimant was building traction motors, and he saw the Claimant "doing an unsafe feat." Palmer testified that he told the Claimant to stop and turn off the machine. According to the Supervisor, Claimant then said "F--- yourself. Get out of here. Go up to your office where you belong and leave me alone."

The Carrier argued that Claimant's refusal to obey the Supervisor's order is insubordination. The standard accepted practice with respect to insubordination is that the employee must obey instructions and file a grievance later if he believes that the order he received from the supervisor was improper. Moreover, the Carrier argues that Mr. Matlock should not have acted abusively toward his Supervisor and that he had been warned in the past about that type of behavior.

The record shows that on December 22, 1980, a General Car Foreman, Leland R. Smith, warned Claimant about being insubordinate and against using foul language. It also shows that the Claimant received a 30-day deferred suspension in 1977, and he was removed from service for rule violations from December 17, 1979, until October 30, 1980. Less than two months after returning from that long suspension, he received the warning from General Car Foreman, Leland R. Smith.

The Board finds that it is an established principle that if an employee disagrees with an order of a supervisor that he is to obey the instructions and grieve the issue later. Insubordination is a serious offense and many employees have been removed from service for failure to comply with instructions from supervisors. In the case at hand, Supervisor Palmer had the authority to give instructions to Claimant and was merely acting in his rightful capacity on February 19, 1981. Claimant should have followed those instructions without complaint or abusive language, and if he felt that they were wrongful instructions, he should have exercised his ability to file a grievance following that day.

The Board also finds that the orderly administration of a railroad requires that employees treat their supervisors with some degree of respect. Using vulgar language toward a supervisor is not appropriate behavior for employees, and Carriers have a right to impose discipline to discourage its use.

The Organization argues that there are no other witnesses to the incident and it is just the Claimant's word against his Supervisor's word. This Board finds that it will not set aside the determination of the investigating officer who evaluated the witnesses' testimony and found Supervisor Palmer to be the more-believable witness. It is well settled that where the record contains substantial evidence in support of Carrier's findings and there is no showing of arbitrary action, the Board will not weigh the conflicting evidence and substitute its judgment for that of the trier of facts. The Board finds that in addition to the insubordinate behavior of the Claimant, Claimant also engaged in abusive and vulgar language toward his Supervisor. That is also a serious offense which can warrant discharge in some instances.

Although there have been some cases where the employee who has used vulgar and abusive language has remained in the employ of the Carrier, the Carrier, in this case, based in part on the past record of the Claimant, has chosen to dismiss him from service. This Board will not substitute its judgment for that of the Carrier unless it finds the action of the Carrier to be arbitrary or unreasonable.

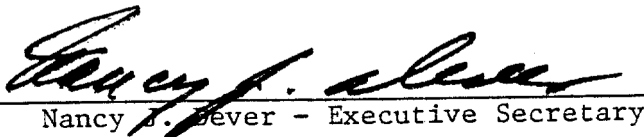
There is no evidence that the action of the Carrier in this case has been arbitrary or unreasonable. There is sufficient evidence of several rule violations on the part of the Claimant and documentary evidence of previous disciplinary action taken toward the Claimant. The Organization has requested leniency in this case. The Carrier has carefully evaluated the Claimant and his behavior and the Claimant's past discipline record and a decision was made by the Carrier not to reinstate the Claimant due to his undesirable behavior and his failure to attempt to correct it. This Board will not substitute its judgment for that of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1984.