

Award No. 1483

Docket No. 1398

2-GN-CM-'51

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:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement, Painter, Peter J. Schreifels was unjustly deprived of his rights for ten (10) days, effective August 8, 1950 and that accordingly, the carrier be ordered to clear his service record and reimburse him for all time lost during the said ten days.

EMPLOYEES' STATEMENT OF FACTS: Painter Peter J. Schreifels, hereinafter referred to as the claimant, was first employed by this carrier on July 20, 1922 as a painter apprentice, and has had employment relationship with the carrier since that date, working as a painter except for periods he was furloughed and also the period he was serving his country during the last war, holding a seniority date as of May 16, 1940.

On July 21, 1950, this claimant was charged with verbally applying epithets showing disrespect to his supervisor, conducting himself in an uncivil and ungentlemanly manner, and engaging in improper altercation with his supervisor on July 17, 1950. This is affirmed by copy of letters submitted as Exhibits A and A-1, signed by Shop Superintendent George L. Snyder in which a formal hearing on said charges was set to begin at 2:00 P.M. July 25, 1950. The hearing date and time was acceptable to all concerned and it was accordingly held, which is confirmed by copy of the hearing record submitted herewith and identified as Exhibit B.

Subsequent to the hearing, claimant was suspended for a period of ten (10) working days effective at 4:30 P.M. August 8, 1950, and this is affirmed by copy of letter dated August 8, 1950 and signed by Shop Superintendent George L. Snyder, submitted and identified as Exhibit C.

This dispute has been appealed in conformity with provisions of the agreement effective April 1, 1948, and subsequently amended, up to and including the highest designated carrier officer to whom such matters are subject to be appealed with the result that this officer has declined to make any satisfactory adjustment thereof.

POSITION OF EMPLOYEES: It is submitted that this claimant committed no offense on July 17, 1950, which remotely resembles disrespect for Gang

the statement of two employes as to what occurred should be given no credence, while the statement of claimant should be believed. We would thus be passing upon the credibility of witnesses and weighing the evidence, which we have consistently declined to do."

Award 3125—Third Division—Referee Youngdahl:

"As we have stated so many times we cannot weigh evidence or pass upon the credibility of witnesses."

Award 3235—Third Division—Referee Thaxter:

"It is not, however, the function of this Board to weigh evidence or pass on the credibility of witnesses, in order that we may substitute our judgment for that of the carrier."

Award 3618—Third Division—Referee Rudolph:

"This Board has repeatedly held that where the Carrier has not acted arbitrarily, without just cause or in bad faith, the judgment of the Board as to propriety of dismissals will not be substituted for that of the Carrier."

Award 3827—Third Division—Referee Douglas:

"A great Number of Awards of this Division have consistently held that in a matter of discipline is it not a proper function of the Division to pass upon the credibility of witnesses or to weigh the evidence in order that we may substitute our judgment for that of the carrier."

The carrier has shown that claimant Peter J. Schreifels violated, and so admits, rules as set forth in the charge served upon him; that he was examined on said rules and had a copy of the rule book; that there has been no abuse of discretion, capriciousness or bad faith.

Therefore, we hold that your Board cannot do other than deny this claim.

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.

On July 21, 1950, claimant was charged with verbally applying epithets and otherwise showing great disrespect to his foreman on July 17, 1950. Claimant was found guilty and suspended from service for ten working days, commencing August 8, 1950. The organization contends that claimant was unfairly treated and asks that carrier be ordered to clear his service record and reimburse him for time lost by the suspension from service.

The record shows that at the time of the altercation constituting the basis for claimant's suspension from service, claimant was engaged in conversation with one Reber regarding the sale of baseball tickets for a baseball game to be played on Great Northern night. The activity was being supported by both the employes and the carrier. During the conversation, Foreman Rau came in and made an inquiry of Reber concerning some part of the shop work. Claimant took offense at the interruption.

He used highly provocative language which cannot, because of its nature, be printed here. In addition thereto, he told the foreman "to hell with you," and, according to his own admission, told him he was "a dirty, rotten scab," and told him "to shut up." The foreman's conduct appears to have been exemplary during the outburst.

Claimant appears to have had the notion that he had a right to call the foreman "a dirty, rotten scab" and that the carrier could do nothing about it. Such words are generally treated as "fighting words" among labor groups. It is quite evident from the record that claimant was nursing a grudge not only against Foreman Rau, but all of the foremen, because they had worked during the switchmen's strike. The conduct of claimant was inexcusable and he became a proper subject of discipline. A suspension of ten days was justified under the facts shown by this record.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1951.