

Award No. 1580
Docket No. 1523
2-ACL-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement F. D. Aldrich, upgraded carmen helper, was unjustly dismissed from the service March 26, 1951.

That, accordingly, carrier be ordered to restore him to service with seniority rights unimpaired and compensated for all time lost.

EMPLOYEES' STATEMENT OF FACTS: F. D. Aldrich, hereinafter referred to as the claimant, was first employed as car repairer helper at Waycross, Georgia, January 5, 1943. He was upgraded under the provisions of Rule 406, assigned to mechanic duties and was working in that capacity on March 9, 1951, when, upon returning from the rest room and before reaching his place of work, he was accosted by Gang Foreman I. D. Johnson, and accused of having been away from his job for 40 minutes, further stating that he, Mr. Johnson, was going to dock the claimant 30 minutes account thereof. The claimant protested, Foreman Johnson pressed his intentions, following the claimant to the place of his assignment. There the discussion grew more heated, threatening motions were made; by-stander intervened; no licks were actually passed and no injury (other than **pride** and **monetary**) inflicted.

On March 12, three days later, the claimant was cited for investigation, 9:30 A.M. March 13, charged with "attempting to maliciously assault and bodily harm Mr. I. D. Johnson".

The investigation was conducted as scheduled and the claimant was dismissed from the service effective March 26, 1951, allegedly for "violating Rules 1 and 32-B of the current agreement, and Rules 1, 12 and 17 of the Rules and Regulations for the Government of Shops".

The action of the Shop Superintendent Mr. E. L. Spicer, in dismissing the claimant was immediately protested and progressed, as provided in the current agreement, to the highest officer designated to handle such disputes and adjustment denied. The Agreement effective November 11, 1940, as amended and reprinted March 1950, is controlling.

POSITION OF CARRIER: The claim here presented to your Board is not the claim which was appealed on the property by representative of the employees. In appealing the claim, the employees' representative merely requested the reinstatement of Carman Aldrich, the request not including compensation for lost time.

At no time has carrier entertained the reinstatement of Carman Aldrich under any circumstances with or without pay, as carrier has no place in its employ for a man who loafs on the job and doesn't give an honest day's work for a day's pay, who displays a defiant and quarrelsome attitude toward his supervisors, and who maliciously assaults with a jimmy bar those in authority who are responsible for the conduct of carrier's operations.

At no time during the handling of this case on appeal on the property has the general chairman of the employees contended that Carman Aldrich was not guilty as charged. The organization has merely contended that the alleged inadequacy of toilet facilities was responsible for Carman Aldrich's attack upon Foreman Johnson. Such a contention might be also expressed that inasmuch as carrier allegedly failed to provide adequate toilet facilities, Carman Aldrich, or any other shopman, or any other employee, was within his rights in assaulting Foreman Johnson. Such a contention on the part of the employees, to say the least, is absurd, and is an attempt to divert from the attention of your Board the severity and maliciousness of Carman Aldrich's attack upon Foreman Johnson. Carrier feels that your Board will recognize the repugnancy of such a fallacious contention.

The attention of the Board is invited to the statement of Carman Aldrich wherein he admits, in answer to two different questions, that he slung his bar on Foreman Johnson, and made a pass with his bar at Foreman Johnson. Attention is also called to Carman Aldrich's uncorroborated statement that Foreman Johnson raised his arm as if to strike him. In this connection, it will be recalled that Foreman Johnson's denial of this allegation is corroborated by Car Repairers Barnard, Brooks and Landrum. The allegation of Carman Aldrich that Foreman Johnson raised his arm as if to strike him is to all appearances a gross mis-statement of facts, in an attempt to minimize his own insubordinate actions and to detract or conceal attention from his malicious attack on Foreman Johnson. Strong-arm tactics on the part of employees, such as were displayed by Carman Aldrich in this case, cannot be condoned by this or any other carrier.

Carrier emphasizes the admission of Carman Aldrich that he slung his jimmy bar and made a pass at Foreman Johnson with his jimmy bar. Carrier cannot countenance actions of its employees, be they members of the carmen's organization, members of other labor organizations, or supervisors, when they take matters in their own hands and assault other employees, as Carman Aldrich did on this occasion. Carrier feels that Carman Aldrich was justly dealt with, consistent with his serious offense, and that he is entitled to absolutely no consideration for reinstatement on any basis. It is respectfully requested that your Board follow its oft-announced policy of not disturbing justly applied discipline.

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.

On March 9, 1951, F. D. Aldrich, car repairer on the first shift in the carrier's car department at Waycross, Georgia, having been upbraided by

Foreman I. D. Johnson for having been away from his work on personal needs for a period of forty minutes, was told he would be docked thirty minutes for absence without permission. After an argument between the two men Aldrich is alleged to have swung a three-foot jimmy bar twice at the foreman, striking him on the right hand with the first blow.

Aldrich was then held out of service and was notified on March 12, 1951, that the incident would be investigated the next day on the charge that Aldrich had attempted malicious assault and bodily harm on Foreman Johnson.

At the hearing Aldrich admitted swinging the bar but contended he did it in anger after the foreman had cursed and had made a threatening gesture toward him with his right hand. The foreman denied these allegations.

Witnesses were examined and cross-examined at the hearing.

In cases of this sort the organization has the burden of proving that the carrier abused its managerial discretion by failing to file properly precise charges in writing against the accused, to provide a fair and impartial hearing, and to assess a penalty no more than commensurate with the offense if proven. If the record establishes that the organization has sustained this burden, this Division will overturn or modify the carrier's disciplinary decision. Otherwise, the Division does not presume to substitute its judgment for that of the carrier.

The carrier also assumes a burden in such a case. Since it charges the employe with an offense, it must accept the onus of proving same. It is part of the organization's burden to establish that the carrier's own obligation was not fulfilled.

On balance, the record in this case appears to support the carrier's rather than the organization's position. That is to say, we think that the carrier in this case sustained its burden of proof against Carman Aldrich and the organization failed to sustain its burden against the carrier. The weight of the testimony and argument necessitates this judgment.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1952.