

Award No. 2691
Docket No. 2491
2-GM&O-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas C. Begley when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)

GULF, MOBILE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement Car Inspector E. H. Thomas was unjustly dealt with when he was held out of service from December 8, 1955 until December 22, 1955.

That accordingly, the Carrier be ordered to: Compensate this employee for all wages lost between December 8, 1955 and December 22, 1955.

EMPLOYES' STATEMENT OF FACTS: E. H. Thomas, hereinafter referred to as the claimant, was employed by the carrier at Venice, Illinois as a carman on April 12, 1918 and was in continuous service until his removal on December 8, 1955, with regularly assigned hours from 7:00 A.M. to 3:00 P.M. Sunday through Thursday, rest days Friday and Saturday.

The carrier's general car foreman directed the claimant to appear for investigation at 10:00 A.M., December 12, 1955 on charges of alleged insubordination account of using abusive language to Car Foreman J. X. Thomas, submitted and identified as Exhibit A.

The hearing was postponed at the request of the claimant until 10:00 A.M. December 13, 1955, and a copy of the transcript of the investigation is submitted and identified as Exhibit B-1.

The carrier elected, through its master mechanic who conducted the investigation, to hold the claimant out of service with the carrier until December 22, 1955 and this is affirmed by copy of letter, submitted and identified as Exhibit B-2.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company, with the result that he has declined to adjust it.

ment for the period of this dismissal. Accordingly, and on that basis, the claimant was permitted to resume work.

POSITION OF CARRIER: The action of Car Foreman J. X. Thomas in directing a carman of the repair track forces to inspect train No. 133 at Venice yards on December 9, 1955, not only was proper and suited to the needs of the situation, but also was wholly in keeping with accepted practices and the provisions of the applicable agreement even if not pleasing to the local carmen. It is the action that is customarily taken at all terminals to meet the requirements of car and train inspection service.

Carrier willingly recognizes and supports the right of authorized local representatives of its mechanics to take to a foreman during regular working hours and without loss of time, any grievance related to unjust treatment or agreement violation; and never has it infringed thereon. **But this point is not here involved.**

On the other hand, **whether or not an employe is a local representative of its mechanics**, carrier does **NOT** concede to him the right to improperly conduct himself at any time while on duty and under pay. **And this is the only point here involved.**

Claimant conducted himself in an improper manner while on duty and under pay on December 8, 1955 when he approached his foreman in a hostile manner which, through a spoken threat, brought on a heated altercation. While it appears that both parties used profanity of a not unusual type, claimant was the first so to do, and the foreman did so only after being greatly provoked.

Further, during the progress of this altercation, claimant conducted himself not only in a **highly** improper manner without justification, but also in an **intolerable** manner. It is unthinkable that **any** subordinate may without jeopardy and while on duty apply to his immediate supervising superior such a vile personal appellation as "a dirty, no-good lying son-of-a-bitch". This intolerable abuse of his foreman is the gist of the complaint made against claimant and is the basis for the discipline applied.

When carrier's general superintendent of motive power and car equipment brought about the re-instatement of claimant under the conditions hereinbefore recited, he was being extremely lenient, and only the future conduct of claimant can tell if his leniency was advisable.

Carrier submits the proposition that claimant was properly dismissed from the service, and the instant claim is without merit; and prays your Honorable Board to so hold in its findings, and to make an appropriate award.

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.

The claimant was notified that he was called for an investigation to be held on December 13, 1955. The claimant was charged with insubordination in that he used abusive language to Car Foreman, J. X. Thomas.

The evidence brought out in the investigation showed that the claimant did use abusive language in his conversations with Foreman Thomas. The evidence also showed that Foreman Thomas used abusive language in his conversations with the claimant.

After the investigation, the carrier dismissed the claimant from service. The submissions of the employees and the carrier does not contain a letter from the carrier addressed to the claimant stating that he was dismissed from service, but both the carrier and the employees admit that the claimant was dismissed from service.

The submissions of the carrier shows an Exhibit dated December 21, 1956, which is a letter from C. W. Esch to E. A. Johnson and contained statements which would indicate that the General Chairman of the Carmen's Organization and an Officer of the Carrier by the name of House, held a meeting. The result of the meeting was that the carrier reduced the penalty of dismissal against the claimant to a penalty of suspension from December 8, 1955 until December 22, 1955, a loss of nine days of work.

The penalty of dismissal from service assessed by the carrier was excessive and the carrier evidently realized this and reduced the penalty of dismissal to a penalty of suspension for nine working days.

From a careful reading of all of the submissions, this Board finds that there was an agreement between the organization and the carrier that the penalty of dismissal should be reduced to the penalty of suspension from December 8, 1955 to December 22, 1955. Thus, we will not reverse the carrier in its handling of the matter.

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 December, 1957.