

Award No. 3642

Docket No. 3451

2-L&N-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard Johnson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman J. E. Kidd was unjustly dismissed from service November 18, 1958, and
2. That accordingly the Carrier be ordered to restore the aforementioned Carman to service with all seniority rights unimpaired and compensated additionally for all time lost subsequent to November 18, 1958.

EMPLOYEES' STATEMENT OF FACTS: Carman J. E. Kidd, hereinafter referred to as the claimant, was first employed as Laborer on September 1, 1942 by the carrier at their DeCoursey Shops; promoted to a carman helper on February 26, 1943 and to carman on February 17, 1953, which latter seniority he held at the time of his wrongful dismissal.

On October 2, 1958 the carrier's master mechanic wrote the claimant charging him with conduct unbecoming an employe as result of using abusive language and pushing Foreman Kennedy on Tuesday, September 30, 1958 and that an investigation would be held on October 9; at the request of employes, the investigation was postponed in conformity with letter of master mechanic dated October 27, 1958.

On October 28, 1958 the investigation was held in the office of the master mechanic at DeCoursey, Kentucky concerning the charges, copy of transcript of investigation is submitted herewith and identified as employes' Exhibit B.

As a result of the charges and investigation, Bulletin No. 41 dated November 18, 1958 was placed on bulletin boards indicating that a carman had been dismissed from service for conduct unbecoming an employe, using abusive language, and pushing a foreman. This notice also contained a

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.

Parties to said dispute were given due notice of hearing thereon.

The claim is that Claimant was unjustly dismissed and should be restored to service with seniority rights unimpaired and paid for time lost.

The notice of hearing charged Claimant "with conduct unbecoming an employee as a result of using abusive language and pushing Foreman Kennedy on Tuesday, September 30, 1958." After the investigation he was discharged.

The evidence is conflicting as to the abusive language and pushing on September 30, 1958, but there is ample credible testimony that on the preceding Saturday, September 27th, the General Car Foreman and Master Mechanic, in company with Rip Track Foreman Kennedy, pursuant to general instructions for an inspection every sixty days, of clothing lockers furnished its employes on its property, at DeCoursey, inspected such lockers as were unlocked, or accessible because users were present to unlock them; that in Claimant's locker, which was unlocked, the Master Mechanic found, removed and gave to Foreman Kennedy a box of fusees and a pair of acetylene goggles, which were company property, for which Claimant had no use in his work, and the presence of which in the locker were improper, for safety and other reasons; that when Claimant came to the office on September 30th, Foreman Kennedy mentioned the matter and Claimant said with some emphasis that no one had any right to look into his locker or take anything from it in his absence; that at a safety meeting that day, at which Foreman Kennedy had announced a further locker inspection, Claimant repeated his objection and stated that he intended writing Mr. Black about it; that the Foreman stated that it was his privilege to write whomever he pleased, including the president; that Claimant made some further remarks, but without replying, the Foreman went to tracks 5 and 6, which were part of his regular working place at one side of the locker rooms; that although Claimant's regular working place was on tracks 1 to 4 at the other side of the locker room, he followed Foreman Kennedy to tracks 5 and 6, again said he was going to write to Mr. Black, received the same reply, and with his face in Kennedy's and his chest pushed against his, twice invited Kennedy to hit him, and twice used a four word expression commonly adequate to provoke a fight under such conditions; that Kennedy said "No, you hit me;" that Claimant said "No, I am not going to lose my god-damn job over you, you don't have guts enough to hit me"; Claimant then left and apparently went to his working place.

In his version Claimant denied using the four word expression, said he had never used it in his life, and stated that the foreman was the aggressor in both the pushing and the challenge to fight, but admitted saying to Kennedy: "you won't hit me, because you haven't the guts," which was certainly a challenge. That Claimant was the aggressor is indicated by those words, by the general circumstances, and by the statement in the Employes' Rebuttal "that all of the trouble between the Claimant and Foreman Kennedy was

a finding of guilt will not be disturbed by this Board, unless some arbitrary action can be established. None is shown here. Reasonable grounds exist to sustain the determination of guilt made by the carrier."

No contention is made that Claimant was not accorded a fair hearing. And to say the least, there is ample record to support the Carrier's action. The organization has made the best possible showing for Claimant under the circumstances; but the Claim must be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January 1961.