

Award No. 4195
Docket No. 3879
2-B&O-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

THE BALTIMORE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the provisions of the current agreement, Carman Helper Willis Hicks was unjustly dismissed from the service of the Carrier on August 27, 1959.

2. That accordingly, the Carrier be ordered to reinstate Willis Hicks to the service with all rights unimpaired and compensate him for all time lost as a result of the aforesaid violation.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper Willis Hicks, hereinafter referred to as the claimant, was employed by the Baltimore and Ohio Railroad Co., hereinafter referred to as the carrier, on the day shift as a carman helper in the carrier's Willard Transportation Yards, Willard, Ohio. Claimant had been in the carrier's service approximately ten (10) years during which he had at all times performed satisfactory service.

Under date of August 8, 1959, carrier's Master Mechanic T. J. Stevenson, directed a letter to the claimant, reading in pertinent part:

"You are hereby notified, in accordance with the rules of wage agreement under which you are working, to report at Master Mechanic Office, Willard, Ohio, at 1:30 P. M., on 8-10-59, for hearing on the following matter:

Necessary to recall BPO's to rework Jrl. boxes under heavy loads of billets account insufficient packing in boxes and when properly worked necessary to apply journal packing to several boxes. Also for insubordination and striking an officer (J. Plunkett Jr.) in the mouth."

Hearing was held as scheduled on August 10, 1959.

The Discipline Rule is examined:

Rule 32 appearing in the current agreement between this carrier and its employes represented by System Federation No. 30, Railway Employees Department, AFL, as revised Sept. 1, 1926 and reprinted May 1, 1940 and November 1, 1952 reads in full as follows:

“Discipline.

No employe shall be disciplined without a fair hearing by designated officers of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe and the duly authorized committee will be apprized of the precise charge and given reasonable opportunity to secure the presence of necessary witnesses. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for his net wage loss, if any, resulting from said suspension or dismissal.

Stenographic report will be taken of all hearings or investigations under Rules 32, 33 and 34, and the employe involved and the duly authorized committee shall each be furnished with one copy.”

In this case the petitioner was afforded a fair hearing by designated officers of the carrier. He was apprized of the precise charge made against him. He was given every opportunity to secure the presence of whatever witnesses he desired. He was represented by counsel of his choosing. Neither the petitioner nor his representative protested any aspect of this hearing. In fact, the petitioner certified his belief that he had been given a fair and impartial hearing and that the hearing had been conducted in accordance with the rules of his agreement.

In this case the petitioner was granted his full and proper rights and privileges under an application of Rule 32 of the working agreement. There was no impropriety about the investigation procedure. There was no impropriety as to the conduct of the investigation. It is not now subject to challenge.

In a word, the Carrier submits that the discipline rule in the agreement was properly complied with in the petitioner's case.

CARRIER'S SUMMARY: In this case the petitioner was properly dismissed from the service of this carrier. His actions while on duty on August 7, 1959 were unconscionable. His failure to perform his duties properly was compounded by striking his supervisory officer. His actions could not and cannot be condoned. The claim in this case in its entirety is without merit. The carrier respectfully requests that this Division so hold and that the claim in its entirety be declined.

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 Claimant Willis Hicks was employed as a carman helper at the Carrier's Willard (Ohio) Transportation Yards. On August 7, 1958, he was assigned, together with other carmen, to service train NY-94. After the train was presumed to have been serviced, General Car Foreman J. Plunkett, Jr., inspected it and found that several cars were not in a satisfactory condition. He discussed the unsatisfactory performance of the work with the carmen in question and instructed them to re-work and re-pack several journal boxes. While he was talking to the Claimant, the latter either struck him in the lower part of his mouth, as related by Plunkett, or put his right hand on Plunkett's right shoulder and pushed him back out of the way, as related by the Claimant.

The Carrier charged the Claimant with having insufficiently packed the journal boxes as well as with insubordination and having struck an officer. After a formal investigation hearing, the Claimant was dismissed from the Carrier's service, effective as of August 27, 1959. He filed the instant grievance in which he requested reinstatement with all rights unimpaired and with compensation for all time lost. The Carrier denied the grievance.

1. No Carrier can operate efficiently if its supervisors may be physically assaulted by employes with impunity. The principle is, therefore, well established in the law of labor relations that a physical assault upon a supervisor is a grave offense which cannot be condoned, except under the most extenuating circumstances, such as manifest self-defense or obvious provocation. See: Award 4001 (Docket 3979) of the Second Division.

In applying the above principle to this case, we have reached the following conclusions:

It is immaterial whether the Claimant struck Plunkett in the mouth or whether he pushed or shoved him back. In either case, the Claimant's action constituted a physical attack upon his supervisor. In defense of his admitted action, the Claimant contends that Plunkett came near to him, screamed at him, and slobbered on his face. However, that contention is not supported by any convincing evidence, except by the Claimant's self-serving statement which we cannot accept as adequate proof. Hence, the Claimant's assault cannot be excused on the ground of self-defense. Furthermore, the evidence on the record considered as a whole does not disclose that Plunkett addressed vile or profane language to the Claimant which could in any way justify his attack upon the former.

In summary, we are satisfied that the Claimant physically assaulted Plunkett without provocation or justification.

2. We have consistently held that a Carrier's disciplinary action can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, excessive or an abuse of managerial discretion. See: Awards 3874, 4000, and 4098 of the Second Division. In view of the seriousness of the Claimant's offense, we are unable to find that his dismissal was based upon such unreasonable grounds. His action constituted indefensible insubordination. He was dismissed for just cause within the contemplation of Rule 33 of the applicable labor agreement.

3. Since we have upheld the Claimant's dismissal for the reasons stated hereinbefore, it becomes unnecessary to rule on the Carrier's additional charge

that he insufficiently packed the journal boxes and we express no opinion on the validity thereof.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1963.