

Award No. 5400

Docket No. 5307

2-GM&O-FO-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph S. Kane when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen and Oilers)**

GULF, MOBILE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the carrier improperly discharged Laborer James C. Towns on August 6, 1965 and

2. That accordingly the carrier be ordered to restore Mr. Towns to service with all seniority and employee rights unimpaired and pay for all time lost retroactive to August 6, 1965.

EMPLOYEES' STATEMENT OF FACTS: On December 29, 1942, the Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the carrier, employed James C. Towns, hereinafter referred to as the claimant, as a laborer and supplyman at Venice, Illinois, shops.

Under date of July 9, 1965, General Enginehouse Foreman T. R. Long wrote the following letter to the claimant:

"Please arrange to be present at Investigation to be held in my office at 10 A. M. DST, July 12, 1965, for the purpose of determining facts in connection with your directing profane and abusive language to the Foreman while on duty and on shop premises about 3:15 P. M. CST, July 9th, 1965.

You will arrange for your representative and or any witnesses to be present at above Investigation."

The investigation was held as scheduled, copy of which is attached and identified as Exhibit A.

On August 6, 1965, Master Mechanic E. A. Johnson advised the claimant that as a result of the investigation, his record was being closed and his services terminated with the Gulf, Mobile and Ohio Railroad. (Exhibit B)

This dispute has been handled with the carrier up to and including the highest officer so designated by the carrier, with the result that such officers have declined to adjust the dispute

"* * * it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the Carriers in disciplinary matters, unless the carrier's action be so arbitrary, capricious or fraught with bad faith as to amount to an abuse of discretion. Such a case for intervention is not presently before us. The record is adequate to support the penalty assessed."

Carrier has shown that Claimant was properly dismissed. He was given a fair hearing and the record clearly shows that Carrier did not act in an arbitrary or capricious manner. This Board should not substitute its judgment for that of Carrier's Officers who are charged with the responsibility of maintaining discipline, and Carrier urges that this employee not be restored to service, and the claim denied.

(Exhibits not reproduced.)

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.

Parties to said dispute waived right of appearance at hearing thereon.

The claimant was dismissed from service for directing profane and abusive language to the foreman while on duty and on shop premises about 3:15 P. M., on July 9, 1965.

On July 9 at 5:45 A. M., the claimant was first out on the first shift overtime board. The foreman telephoned the claimant's home and he was not there. The next man on the Overtime Board was called to fill the vacancy, which was the regular procedure. Subsequently, that day, while the foreman was talking to hostler Lingle, the claimant accused the foreman of cheating him out of a day's pay and called him a "yellow belly," and other expressions of ridicule which are in conflict. At the investigation the Hostler testified in part, as follows: * * * Question: "You did hear Mr. Towns (Claimant) call Mr. Bayer (foreman) 'Yellow Belly?'"

Answer: Yes Sir. I think there was something added to that but I could not distinguish what it was.

Question: Was there an atmosphere of belligerence prevailing?

Answer: I do not know. I was taken by surprise. I would say it was more than just conversation.

Question: In other words, it disturbed you, the type of language being used?

Answer: I would say the whole thing disturbed me. What I mean by surprised is that George (Foreman) and I were standing there talking about the work that had been done and work to be done by us.

All of a sudden, he was disturbed by the way he said he was being treated. I knew nothing about it."

Thus the record supports the position of the foreman that he was reprimanded for doing his work according to the terms and conditions of the agreement. The Claimant's loss of work was due to his own personal obligations. Furthermore, neither a foreman or employe need be subject to situations that arose in this incident. If the claimant has an objection to his working condition the proper procedure is for him to seek redress through his organization, rather than settle it on his own terms.

Thus the claimant subjected the foreman to ridicule and his hostile attitude if expanded, would hinder working relations.

In light of the above statements, the Division can find no proper basis for substituting its judgment for that of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1968.