

Award No. 5608

Docket No. 5446

2-SOU-CM-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Francis B. Murphy when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Carman R. H. Bedwell, Knoxville, Tennessee, was improperly suspended from service March 15, 1966 through April 11, 1966.

2. That accordingly the Carrier be ordered to compensate the aforementioned employe for all time lost beginning March 15, 1966 through April 11, 1966.

EMPLOYEES' STATEMENT OF FACTS: Carman R. H. Bedwell, Knoxville, Tennessee, hereinafter referred to as the Claimant, was employed by Southern Railway Company, hereinafter referred to as the Carrier, at Coster Shop, Knoxville, Tennessee and was removed from service at 3:15 P. M., March 15, 1966 through April 11, 1966, charged with insubordination in that he used abusive language toward Assistant Foreman B. L. Raley and shoved him a short time prior to the preliminary investigation. Copy attached and marked Exhibit A.

Formal investigation was held 10:00 A. M., March 18, 1966, copy attached and marked Exhibit B.

In a letter dated March 24, 1966, the Claimant was advised by Mr. M. H. Hammett, Manager Coster Shop, that he was guilty as charged and suspended from service without pay beginning March 15, 1966, and ending at midnight April 11, 1966. Copy of letter attached and marked Exhibit C.

This dispute has been handled with the Carrier's officers designated to handle such matters, in compliance with the current Agreement, all of whom have refused or declined to make satisfactory settlement.

The Agreement effective March 1, 1926, as subsequently amended is controlling.

The Board has on numerous occasions recognized Carrier's right to dismiss employes for insubordination. For example in Second Division Award 3208, Referee Ferguson, claim of an electrician dismissed for insubordination and "shouldering" a supervisor for reinstatement and pay for time lost was denied as "shouldering" a supervisor and then upon questioning answering reluctantly "Well if I did he deserved it anyway" proves insubordination conclusively.

In Second Division Award 3894, Referee Daugherty, where an employe was discharged for insubordination refusing to carry out a foreman's order to work on diesel engine, claim for reinstatement without pay for time lost was denied under " * * * criteria which are summarized in Awards 8431 and 8503 of the Third Division" and since claim " * * * is essentially one of leniency. The Division now holds as it has many times in the past that leniency is a function for the carrier not this Board."

Section 3, First (i) of the Railway Labor Act restricts the Board's authority to deciding "disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *." As authority of the Board is limited it is clearly evident that it is without authority to order the Carrier to reimburse Carman Bedwell for the time lost while suspended for just and sufficient cause. In these circumstances the Board is left with no alternative but to make a denial award.

All evidence here submitted in support of Carrier's position is known to employe representatives.

Carrier not having seen the Brotherhood's submission reserves the right after doing so to make response thereto and submit any other evidence necessary for the protection of its interests.

(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 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, R. H. Bedwell, a carman, and Local Chairman for the Brotherhood of Railway Carmen of America, employed by the Southern Railway Company, at its Coster Car Shop, contends that he was improperly suspended from service March 15, 1966 to April 11, 1966, both dates included, a total of 28 days. It is contended that he should be compensated for all time lost resulting from this allegedly unjust suspension.

The charges against Bedwell, which resulted in the suspension, were that he used abusive and profane language to his assistant foreman and that he shoved said assistant foreman, both actions constituting an act of insubordination which justified the suspension complained of.

As to the use of abusive language, it is admitted. The second part of the charge, i.e., shoving the assistant foreman, is denied by petitioner. The evidence in respect thereto is conflicting. Witnesses for the claimant, some of which is so irrelevant as to be not worthy of consideration, support the allegations of claimant. Testimony of witnesses for the carrier supports the charge. In view of the admission that the first part of the charge is true, we cannot hold that the suspension of 28 days was arbitrary, without just cause or in bad faith. There is, therefore, no justifiable reason for disturbing the carrier's judgment and action. There is no necessity for an attempt to resolve the conflict as to the second part of the charge.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1968.