



Award No. 5634

Docket No. 5530

2-GN-CM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the Agreement when they unjustly suspended Carman-Welder Joseph J. Helms from the service of the Carrier for a period of five (5) days.

2. That accordingly, the Carrier be ordered to compensate Carman-Welder Joseph J. Helms for the time removed from service May 9, 10, 11, 12 and 13, 1966, and that this mark be removed from his service record.

EMPLOYEES' STATEMENT OF FACTS: The Great Northern Railway Company, hereinafter referred to as the Carrier, employed Carman-Welder Joseph J. Helms, hereinafter referred to as the Claimant, at its Jackson Street Shop, St. Paul, Minnesota, with assigned hours of duty from 7:00 A.M. to 3:30 P.M. with rest days of Saturday and Sunday.

On April 4, 1966, the Claimant between 3:25 and 3:30 P.M. with five other employes, was standing by the center door of Section 6 of the shop when he was approached by Foreman Pitman who informed Claimant that he was to stand by his locker. When informed by Claimant this his locker was in Section 6 building down by the welders' booth an argument developed between Claimant and Foreman Pitman. The following afternoon while Claimant was performing his duties, Mr. Pitman again brought up the subject of the location of the Claimant's locker and during this argument the Claimant called Foreman Pitman a g-d d-----d liar. On April 12th, Claimant apologized to Foreman Pitman for his use of words during the argument. Foreman Pitman accepted the apology and would talk to the Superintendent about the investigation. Mr. Moore, Shop Superintendent would not allow the Foreman to accept the apology unless Claimant would make out a written apology and this Claimant refused to do as he had already apologized twice.

courtesy demanded by Rule 701, the Carrier is at a loss to understand what the Organization would suggest does constitute insubordinate conduct. The claimant did not simply direct his expression at the wall or make his remark under conditions of isolation. To the contrary, it was addressed solely at Shop Foreman Pitman. Furthermore, to mark the claimant's expression as mere swearing would be to ignore the realities of the situation. The Organization was fully aware of the seriousness of this conduct when it chose to insert further confusion by claiming discrimination against a committeeman under Schedule Rule 27 (see page 4 of Carrier's Exhibit No. 5). Most certainly, being a committeeman does not permit one greater rights than those enjoyed by other employees. Nor does being a committeeman grant immunity from discipline or provide carte blanche authority to call a supervisor a "g-d d-----d liar." The claimant was disciplined for his own voluntary misconduct and not because of the assortment of miscellaneous intervening reasons suggested by the Organization. This misconduct is fully substantiated by the record and obviously warranted the nominal five-day suspension which resulted.

**THE CLAIM OF THE ORGANIZATION IS WITHOUT
MERIT FOR THE FOLLOWING REASONS:**

1. The record is barren of evidence showing procedural defects of a prejudicial nature.
2. The claimant's representative was given an opportunity to cross examine witnesses at the investigation.
3. The claimant and his representative were provided ample time to prepare their case or request a postponement if desired.
4. The claimant was provided an opportunity to have the witnesses of his choice appear at the investigation.
5. There is no evidence of prejudicial personal involvement or improper conduct by the hearing officer.
6. There is substantial evidence of record to warrant the disciplinary action taken by the Carrier.
7. There is no evidence that the Carrier's disciplinary determination was arbitrary, capricious or fraught with bad faith.
8. The claimant's admitted misconduct fully warranted the nominal five-day suspension assessed herein.

For the foregoing reasons, the Carrier respectfully requests that this claim be 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 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 waived right of appearance at hearing thereon.

This is a discipline case. The Board has reviewed the transcript of the investigation, and in addition, has considered the Employees' objections with regard to alleged procedural defects.

It is the decision and judgment of the Board that the aggrieved employee is shown by the record to have been guilty of contemptuous conduct on the day in question; that the hearing was fairly conducted after due and proven notice; and, that the penalty is not unjust.

AWARD

Claim (1) Denied.

Claim (2) Denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January, 1969.