



Award No. 5681
Docket No. 5595
2-IC-FO-'69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Gene T. Ritter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Illinois Central Railroad Company unjustly suspended material man, Willie Thompson, McComb, Mississippi, from service on December 1, 1965, pending investigation, and dismissed him from service on January 7, 1966, following the investigation held December 29, 1965.

2. That accordingly the Illinois Central Railroad Company be ordered to restore Willie Thompson to service with seniority and service rights unimpaired, including vacation rights, coverage under existing Health and Welfare and Life Insurance provisions and compensate him for all time lost from December 1, 1965.

EMPLOYEES' STATEMENT OF FACTS: Willie Thompson, herein-after referred to as the Claimant, was employed by the Illinois Central Railroad, hereinafter referred to as the Carrier, as a material man at their shop at McComb, Mississippi.

Claimant has approximately twenty (20) years' service with the Carrier and held a regularly assigned work week of Monday through Friday, with Saturday and Sunday as assigned rest days.

On Saturday, August 7, 1965, which was one of his regular assigned rest days, Claimant was forced into an altercation with Pinky Stovall, Jr., resulting in Mr. Stovall's death.

Claimant was taken into custody by the City police on August 7, 1965, following said altercation, and committed to jail, where he remained until his release on September 1, 1965.

On Sunday, August 8, 1965, which was one of his regular assigned rest days, Claimant had his son report to his Foreman, L. L. Regan, that he was in jail.

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.

The record discloses that Claimant, Willie Thompson, was an employe of Carrier on August 7, 1965, and had been an employe with this Carrier for a period of approximately 20 years; that on Saturday, August 7, 1965, Willie Thompson was walking down the streets of the city of McComb, Mississippi; that at this time and place Claimant had nothing but peace in his heart and good will for his fellow man when he encountered one Pinky Stovall, who suddenly, abruptly, and without provocation hit Willie Thompson in the right side of Willie Thompson's mouth, knocked him down and kicked him. Thereupon, Willie Thompson regained his vertical position, ran around the Chicken Shack (an eating establishment), through the back of the pool hall, back onto Summit Street and into his barber shop. At his barber shop, Willie Thompson reached into a drawer behind the barber chair where he kept a loaded pistol. At about the time Willie Thompson was looking for the pistol, Pinky Stovall came up to the door of the barber shop and in plain, concise language uttered words that cast a doubt on the moral integrity of the mother of Willie Thompson, and ended with a threat to kill Willie Thompson. In this same conversation, Thompson invited Pinky Stovall into the barber shop and uttered other words that cast doubt on the ancestry of Pinky Stovall. At the conclusion of this short conversation, Pinky Stovall suddenly observed a pistol in the hand of Willie Thompson. Upon making this observation, Pinky Stovall turned and ran behind a car on Summit Street with Willie Thompson in hot pursuit. He ran into an alley adjacent to the Chicken Shack, and the record discloses that, to Pinky Stovall's bad fortune, this was a dead end alley. Willie Thompson shot at Pinky Stovall, from a distance of approximately 50 feet, two times, one of the shots causing Pinky Stovall's demise and expiration. Thompson went back to the barber shop, placed his pistol into the drawer, and proceeded to turn himself in to a policeman. The record discloses that at the time that Willie Thompson was interrogated, approximately one hour after the shooting, Willie Thompson showed no marks, scratches, bruises, and was not bleeding from any area. For the reason that he was held in custody by the proper civil authorities on the charge of Murder, he failed to report for duty at the expiration of his rest day. However, the record shows that on Sunday, August 8, 1965, he was visited by his Foreman, thereby disclosing that Carrier was aware of his inability to report for obvious reasons. On September 1, 1965, Claimant was granted, at his request, a 90 day leave of absence, and an investigation was held on December 29, 1965. The record further discloses that on October 13, 1965, this Claimant was tried by a civil jury which resulted in a "hung jury" and on March 31, 1966, Claimant pleaded guilty to a reduced charge of manslaughter and was subsequently given a suspended sentence. The record further discloses that this Claimant tendered the defense of "self defense" at his civil trial, and also in the investigation held by Carrier.

The investigation resulted in this Claimant being discharged from service for the reason that he was guilty of "conduct unbecoming an employe."

The only question involved in this case is: Does the Carrier have the right to discharge Claimant from service under the existing circumstances? This Board finds that Carrier was within its rights in discharging Claimant from service because of conduct unbecoming an employee. Under the evidence adduced at the investigation, the defense of "self-defense" was not available to this Claimant at the time of the shooting. He was under no present danger, and was, in fact, the aggressor at this particular time. The record also discloses that this Claimant had a past record with this Carrier of insubordination, and a past record of being quarrelsome with his co-workers and superiors while on duty. The Carrier is under no contractual obligation to retain in its employment employees that it has just reason to believe are quarrelsome, antagonistic or of a dangerous character. It may be that the deceased involved in the affray provoked, to a great extent, the action taken by this Claimant. However, this Board finds that the retaliatory action taken by this Claimant far surpassed that that an ordinary, reasonable and prudent person would have taken under the same facts and circumstances. There is no doubt that this Claimant could have rightfully fought back at the time he was accosted or that he could have reported the assault and battery made upon him by Pinky Stovall and could have thereby gained some degree of vengeance by allowing the duly constituted authorities to protect his rights as a peaceful, law-abiding citizen. The fact that the incident occurred off Carrier's property and on Claimant's rest day does not take away Carrier's right to discipline this Claimant. See Awards 1860, 2787, 4689 and 5043. For the reasons above stated, this claim will be denied.

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, 1969.