



Award No. 5854

Docket No. 5734

2-IC-CM- '70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Arthur Stark when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL — CIO
(Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Fred F. Jenkins, Carman, was unjustly dismissed from service of the Illinois Central Railroad on December 19, 1967.
2. That accordingly the Illinois Central Railroad be ordered to reinstate Carman Fred F. Jenkins to service, paid for all time lost, with seniority rights unimpaired, and any other benefits he would be deprived of while being held out of service.

EMPLOYEES' STATEMENT OF FACTS: Carman Fred F. Jenkins, hereinafter referred to as the claimant, entered the service of the Illinois Central Railroad, hereinafter referred to as the carrier, in the year 1935. At the time of the incident giving rise to the instant claim, claimant was regularly employed by carrier as a car inspector, South Water Street, Chicago, Illinois.

On December 1, 1967, J. P. Haines, carrier's superintendent freight service, addressed the following letter to claimant:

"Chicago, December 1, 1967

Mr. Fred Jenkins
12324 South Racine Avenue
Calumet Park, Illinois 60643

Dear Sir:

Please arrange to attend a formal investigation to be held December 8, 1967, at 10:00 A.M. in Office of Master Mechanic, Room 500 Annex, Central Station, to determine your responsibility if any for conduct unbecoming an employe at Congress Street Yard Office on November 24, at approximately 9:00 A.M.

Specifically you are charged with the following:

1. That you were disrespectful, unreasonably quarrelsome, disrespectful and abusive to General Yard Master O. W. Derr, Trainmaster F. A. Brink, and Master Mechanic H. J. Dawson.

In Second Division award 1323, Referee Donaldson said:

"... it has become axiomatic that it is not the function of the National Railroad Adjustment Board to substitute its judgment for that of the carrier's in disciplinary matters, unless carrier's action be so arbitrary, capricious, or fraught with bad faith as to amount to an abuse of discretion."

In Second Division award 4101, Referee Anrod said:

"We have consistently held that a disciplinary penalty imposed upon an employee can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, discriminatory, excessive, or an abuse of managerial discretion."

Clearly there is no basis for concluding the company abused managerial discretion in this case, the employee had caused trouble in the past and efforts to persuade him to get along with others failed. He was guilty of shameful conduct on the date in question. In order to maintain discipline and respect for authority, the company had no alternative but to dismiss the claimant from service. Reinstatement would in effect give employees license to abuse and hold up to ridicule the supervision.

The company has shown that the claimant is guilty of a serious offense and that the union does not dispute his guilt. It has also shown that the Division has traditionally refused to substitute its judgment for management's in evaluating the measure of discipline. There is no evidence in this case that the company acted arbitrarily. Clearly, the claim should be denied.

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.

Carman Fred F. Jenkins entered Carrier's service in 1935 at the age of seventeen. He continuously employed by Carrier, except for a stint in the Armed Forces, until December 1967. During this 32 year period Mr. Jenkins was never disciplined except for a 1965 letter of admonition concerning some damage to trailer caused by his misjudgment of the trailer's height.

On December 1, 1967, Mr. Jenkins was formally charged with "conduct unbecoming an employee". Specifically, it was alleged that, on November 24, at the Congress Street Yard Office,

- "1. . . . you were disrespectful, unreasonably quarrelsome, disrespectful and abusive to General Yard Master O. W. Derr, Trainmaster F. A. Brink, and Master Mechanic H. J. Dawson.
2. That your conduct constituted insubordination.
3. That your conduct caused a disruption of operations."

A hearing was conducted on December 12, 1967; Mr. Jenkins was discharged on December 19. The grounds: "The investigation developed that the

charges were sustained and that you violated Superintendent's Bulletin Notice No. 1 . . ."

Testimony at the investigation was presented by Master Mechanic H. H. Dawson, General Yardmaster O. W. Derr, Trainmaster F. A. Brink, Terminal Air Brake Foreman D. W. Reihel and Carman Jenkins. With respect to the events of November 24, 1967, this testimony reveals:

On the morning of November 24 Claimant Jenkins, assigned as a Car Inspector, became disturbed because two cars had been moved, he believed, without his being advised. He was close to these cars when they were moved, he recalls. Following this incident Jenkins entered Yardmaster Derr's office. According to the Yardmaster, Jenkins "shouted I was trying to murder him and he even turned up his radio and said he wanted the whole town to hear it . . . I couldn't calm him down. I tried to tell him no one tried to murder him and he kept yelling." Jenkins asserted Derr had told him to "cut the air in on 13", but Derr replied, "I thought you pointed to 14." Jenkins accused Derr (the Yardmaster recalls) of not being able to handle the Congress Street Yard operation, adding that "he was going to get rid of me and have me taken up with the General Chairman . . ."

At about 8:30 A.M. Derr phoned Trainmaster F. A. Brink to report Jenkins' behaviour. Brink went immediately to the Congress Street office where he joined Derr and several switchmen. Master Mechanic Dawson and Foreman Reihel joined Derr and Brink and the four men then interviewed Jenkins, who was in the next room. Jenkins told them, according to Brink, "They all are trying to kill me; they tried to get me in the world war." Dawson asked about the car moves. Jenkins reported they were trying to kill him and charged "you are trying to hold a kangaroo court on me." He accused Dawson, "you never done a thing for anyone in the department and you have to do what this man says" (indicating Brink). Jenkins then accused Brink: "You are the man that called me a homosexual." Turning back to Dawson, Jenkins charged, "You are no more a supervisor than a ten year old kid, and are just a cancer nose." Dawson: "Tiny, you get ready and go home." Jenkins told Derr, "I will get you", and left, but returned in a few minutes and addressed Brink, "I will get you too."

Master Mechanic Dawson corroborated Brink's testimony (as did Mr. Reihel) and recalled, additionally, that Jenkins accused him of trying to "get him" ever since he (Dawson) had come on the job, that he was "just like the rest of them, they were all out to 'get' him", and that "he was not afraid of me and would 'get' me before I ever got him."

Claimant Jenkins' testimony regarding November 24's events may be summarized as follows: (1) He was perturbed about the two cars having been moved while he was so close to them. (2) He did accuse Yardmaster Derr of attempting to kill him but that "was not the intent of the meaning". (3) He did not tell Dawson that he was no more of a supervisor than a 10 year old kid or make the other allegations noted by his superiors. (4) He made no threats. Carrier representatives misinterpreted his words.

* * * * *

Notwithstanding Claimant Jenkins' denials, we are convinced that on November 24, 1967 he made the statements in the Company's office (and before) attributed to him by Management witnesses. There is no doubt that he was disrespectful, quarrelsome and abusive to his superiors. On the other hand, there is no convincing evidence that operations or service was dis-

rupted or that Claimant was insubordinate in the sense of refusing or failing to obey orders or perform his duties.

It seems highly doubtful whether Claimant's November 24 tirade could really have been based on the alleged yard incident. Clearly, he overreacted. Moreover, it is fair to assume that his actions could not have been typical of his conduct since Management would never have tolerated such behaviour for thirty-two years. In this regard, note these comments in the record about his past performance:

"... as far as his work is concerned, Mr. Jenkins is as good a Carman as I have ever seen on this railroad. He knows the rules; his work is accurate and in my opinion, and to my knowledge, has never made any mistakes. . . . I have never . . . known Mr. Jenkins refuse to do anything. Mr. Jenkins has been a good carman." (Trainmaster Brink)

"When I first hired out . . . he was one of the nicest men I ever met." (Yardmaster Derr)

How, then, can Claimant's actions be accounted for, if at all? The record provides several clues:

1. When asked if he believed the supervisors who testified about his November 24 actions were prejudiced against him, Claimant responded:

"Not until this last three years. On these last three years I have had more trouble than at any time I have been under the Master Mechanic. I will say Fred (Fred Brink, Trainmaster) and I never had any trouble up until this incident."

2. In August 1967, a few months prior to the "final" incident, General Yardmaster Derr told Trainmaster Brink that they were having "the same old trouble we have always had" with Jenkins. Brink then asked the employee what the problem was. Jenkins replied:

"You and all the rest are trying to kill me. I have got you on record in Mr. Wilson's office and you will be indicted for murder. . . . The men talked to me over on Van Buren Street, and they said things to me causing me to yell back which strained my vocal chords. I can make more money singing than I can as a Carman. . . . You and the others are all out to get . . ."

3. On another occasion, according to Trainmaster Brink, he and Master Mechanic Dawson tried to help Jenkins "get straightened out". There had been complaints from men working with the Claimant who were scared of him because of his actions. "We tried to assist Mr. Jenkins, not knowing or having the capabilities of determining what was causing this", Brink recalled. He and Dawson finally recommended that Jenkins visit the Illinois Central Hospital for a check-up, which he did.

4. Master Mechanic Dawson recalled that Jenkins had complained of harassment, lack of cooperation and surveillance:

"As early as 1964, there was a conversation held in Mr. D. L. Woods' office. . . . Mr. Jenkins made the charge that the F.B.I., the Special Agents, the State Police, the City Police had him under constant surveillance and were using electronic devices to keep track of him and that this harassment was the cause of him losing his job as a singer, the cause of his becoming over excited at work."

This evidence points to but one conclusion, in our judgment. While the Board members are not physicians, it seems quite apparent, even to laymen, that Claimant was seriously disturbed and emotionally ill. For twenty-nine years he had been an exemplary employee. Then, suddenly, in 1964 he displayed feelings of persecution, starting with law enforcement authorities and later expanded to include management and supervisory authorities. Messrs. Brink and Dawson wisely recognized that the problem was beyond their capabilities. Medical advice was sought but, unfortunately, the record does not reveal any medical findings. Claimant testified that he was informed, following his hospitalization "there is nothing we have found that you would need to go further". He thereupon returned to work. (Mr. Brink recalled hearing from Dawson that "Jenkins was getting along fine after he was released from the hospital and there was no animosity . . .")

Regrettably, the improvement did not last. Nevertheless, we are not convinced that discharge was the only action available to Carrier in December 1967 or, indeed, that it was at all appropriate in light of Claimant's life-time of service and obvious illness. There is good reason to believe, in fact, that he was not really responsible for his November 24 actions.

That is not to say, of course, that Carrier is obligated indefinitely to retain in active service an employee whose conduct shows such deterioration. It can, based upon proper medical recommendation, remove an employee from service for physical or mental disability. It can help arrange for a disability retirement. And there may be other avenues open. This Board, of course, cannot require Management to take any particular course of action. We do hold, however, that under the circumstances of this case, the discharge action was arbitrary and therefore cannot be sustained.

We do not know what Claimant's state of health may be today; more than two years has passed since his discharge. In sustaining the claim, therefore, we must also note that we are not diminishing Management's right to make a determination concerning Claimant's fitness to continue in his regular position. That determination, however, is to be made after restoring to Mr. Jenkins all his contractual rights.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Kileen
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1970.