



Award No. 6152

Docket No. 5930

2-SOU-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Carman C. H. Johnson, Birmingham, Alabama, was improperly suspended from service December 14, 1968, until 8:00 A. M. January 12, 1969.

2. That accordingly, the Carrier be ordered to compensate the aforementioned employe for all time lost beginning December 14, 1968, until 8:00 A. M. January 12, 1969, and the charges be removed from his personal employment record.

EMPLOYEES' STATEMENT OF FACTS: Carman C. H. Johnson, Birmingham, Alabama, hereinafter referred to as the claimant, was employed by the Southern Railway Company, hereinafter referred to as the carrier, at Birmingham, Alabama, and was removed from service December 14, 1968, until 8:00 A. M. January 12, 1969, charged with engaging in an altercation with Carman C. F. Sims while on company property on December 13, 1968.

After several postponements which were mutually agreed upon by all, the formal investigation was held on December 31, 1968 at 2:00 P. M.

Per letter dated January 8, 1969, Claimant was advised by Mr. C. A. Jay, Master Mechanic, that he was guilty as charged and, therefore, was suspended from service from December 14, 1968, until 8:00 A. M. January 12, 1969.

On January 28, 1969, claimant's local chairman, wrote the master mechanic, pointing out that the transcript of the investigation failed to prove him guilty and claiming pay for all time lost beginning December 14, 1968 until 8:00 A. M. January 12, 1969 and that said charges be removed from his personal employment record.

wise, besides the point, as the employer had the right to discharge Timmerman because of the altercation whether he was to blame or not, so long as this was real ground of the discharge, and not a mere pretext."

In Second Division Award 4440, Referee J. Harvey Dailey, the Board held:

"Although Yardman Burnett is not a claimant herein, it is important that the record show that he was accorded the same treatment as the Claimant by the Carrier."

Carrier treated both participants of the altercation equally when assessing discipline.

CONCLUSION

1. Carrier has observed all of the procedural rights of the claimant under the current agreement.

2. Carrier has accorded the claimant his fundamental rights of due process.

3. Carrier has proven the claimant guilty as charged of engaging in an altercation with Carman C. F. Sims while on company property on December 13, 1968, by substantial probative evidence adduced at a fair and impartial investigation.

4. Carrier has acted with reason and responsibility when assessing discipline, considering that the altercation concerned a threat and challenge to that threat of possible physical violence with a knife.

5. Carrier has proven that Second Division Awards of the National Railroad Adjustment Board have overwhelmingly supported carrier's prerogative to assess discipline.

6. Carrier has treated both participants in the altercation in kind.

The Brotherhood has not and cannot prove the validity of its claim based upon the record. The evidence supports a denial award and the carrier respectfully requests that the Board render same.

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.

This is a claim that Carman C. H. Johnson was improperly suspended from service from December 14, 1968 to January 12, 1969.

Review of the entire record reveals that on December 13, 1968, while preparing to go on duty, the Claimant, upon hearing Carman C. F. Sims threaten to physically assault with a deadly weapon two other employes, inquired of Sims as to who was to be assaulted. Upon learning that he (Johnson) was to be one of the victims, the claimant urged Sims in a provocative manner to initiate the assault.

Because of this latter action, which because of its imprudence cannot be condoned, the Board finds that Carrier's decision to discipline the complainant meets the test of the "just and sufficient cause" specified in Rule 34 of the current Agreement.

However, pursuant to numerous prior Awards, the Board weighed whether the scope of the disciplinary suspension was commensurate with its Findings as to the extent of misconduct. The Board has reached the conclusion that 30 days suspension was excessive in that it did not take into consideration two significant factors, described below.

First, the Claimant has an unblemished record of service with the Carrier of 17 years. This is as unusual as it is commendable. Second, the Claimant displayed unusual personal traits in eliciting from Sims the names of the intended victims, thus acting as a "good citizen." These two factors clearly distinguish Johnson from Sims, and entitle Johnson, the Board is persuaded, to more favorable treatment than Sims, who was also suspended for 30 days.

Thus, while the Board finds that the Carrier had just cause to discipline Johnson, it finds a four week suspension excessive, and therefore directs that Claimant be compensated in an amount equal to 50% of the amount of earnings lost because of the suspension, to be computed on the basis of the actual days he would have worked had he not been suspended.

AWARD

Claim sustained to the extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1971.