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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6432
Docket No. 6284
2-SPT(PL)-CM-'73

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

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Southern Pacific Transportation Company (Pacific Lines)

Dispute: Claim of Employees:

1. That under the current agreement Car Inspector L. F. Horan, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of November 25, 1970 after nineteen (19) years service with the Carrier.
2. That the Carrier be ordered to:
 - (a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired, and be compensated for all time lost retroactive to October 29, 1970 when he was removed from service pending hearing and subsequently dismissed on November 25, 1970.
 - (b) Grant to the Claimant all vacation rights.
 - (c) Assume and pay all premiums for hospital, surgical and medical benefits, including all costs for life insurance.
 - (d) Pay into the Railroad Retirement Fund the maximum amount that is required to be paid an active employee for all time he is held out of service.

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.

Claimant disputed the correctness of pay received by him. After several attempts to straighten it out on his own, he went with his Local Chairman to the Master Mechanic's office on October 29, to check the records again. While there, it is alleged, claimant became loud and quarrelsome and used vulgar language in the presence of two male clerks, in the vicinity of other office personnel including a female.

Rule 801 of the General Rules and Regulations states that, "Employees will not be retained in the service who are --- quarrelsome ---. Courteous deportment is required of all employees in their dealings with --- each other ---. Vulgar language is forbidden ---."

Pursuant to Rule 39, of the Agreement a disciplinary hearing was held on November 9 and November 11. Claimant was represented by his Local Chairman, Locomotive Carpenter and Freight Carman. No objection was made as to the notice for the hearing, the timeliness of the hearing or to the fairness of the hearing. After the hearing, claimant was notified by letter dated November 25, that he was dismissed on the basis of the evidence adduced at the formal hearing.

Rule 38 (b) of the Agreement states that, "A claim or grievance may be presented in writing provided said written claim or grievance is presented within sixty (60) days from the date of the occurrence on which the claim or grievance is based."

Within the sixty days referred to in Rule 38 (b), the matter of restoring claimant to his job was discussed as evidenced by letter dated December 18, from the Superintendent to the Local Chairman, Employees' exhibit D. The letter acknowledged the discussion with the Local Chairman and promised to investigate and advise. By letter dated January 27, to the Local Chairman, the Superintendent denied the request for reinstatement, "at this time", and requested that the Local Chairman call for a conference at a later date, Employees' exhibit E. By letter dated May 7 to Local Chairman, the Superintendent denied the request for reinstatement after a conference with a representative of the Organization and the claimant, Employees' exhibit F. By letter dated 5-8, the Organization representative wrote to his Local Chairman stating that at the conference held the day before, claimant was offered reinstatement on a leniency basis but refused it, saying that he was entitled to full back pay; would not sign any papers, and after thanking the Superintendent and Master Mechanic walked out, Employees' exhibit G. The claim was then formally presented in writing by letter dated June 8, Employees' exhibit J. Carrier answered by letter dated June 11, invoking Rule 38 (b) as a bar to the claim and adding, without prejudice to the defense of Rule 38(b), that the dismissal was justified on the merits, Employees exhibit K.

We note that Rule 38 (a) of the Agreement provides for informal review of a grievance. Assuming, for the sake of discussion, that the dismissal was discussed informally on behalf of, "An employee who considers himself unjustly treated, ---", as stated in Rule 38 (a), it might be argued that the formal claim in writing pursuant to Rule 38 (b) was timely, within 60 days after the grievance was denied. We do not make a finding with regard to this but will accept the

gument hypothetically in order to review the merits. We believe that this method of approaching the result, while it may be unusual, will provide a basis for assuring the parties that all aspects of this case have been fully considered.

We find that the hearing not only produced substantial testimony that claimant was quarrelsome and used vulgar language as alleged but also that with the intervention of his representatives he was given full opportunity to assert by way of defense what may have motivated or provoked his outburst of vulgarity. As his own witness, he was evasive and unconvincing. His representatives cross examined the witnesses with the skill of a "Perry Mason." They obtained an adjournment to require Carrier to produce time card records which claimant argued that the Carrier had refused to show to him. The claimant called his Local Chairman who had been present, to testify as to the words used. When questioned by claimant, the Local Chairman finally had to admit that the vulgar words were uttered, although he could not recall who had made the vulgar remarks. When given the opportunity to call the office female employee who was present at the time as a witness, claimant preferred not to do so.

Accordingly, and without making a specific finding on the issue of compliance with Rule 38 (b) of the Agreement, there is no basis to disturb the result which was based on substantial evidence produced at the hearing.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January, 1973.