

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

Parties to Dispute: (System Federation No. 121, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Dallas Car Interchange and Inspection Bureau

Dispute: Claim of Employees:

1. That under the Agreement, Carmen Charles Cottongame and Peter Kufner were improperly dismissed from service April 11, 1972.
2. That accordingly, the Dallas Car Interchange and Inspection Bureau, member Carriers - Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railroad Company, Louisiana & Arkansas Railway Company, St. Louis-San Francisco Railway Company and Missouri-Kansas-Texas Railroad Company, be ordered to compensate the aforementioned employees for all time lost beginning April 11, 1972, until returned to service and that they receive all benefits flowing to an employee in active service and that they be returned with their seniority rights unimpaired.

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.

We find the record in material support of Carrier's conclusions that on March 20, 1972, Claimants, while on Carrier property, became embroiled in an abusive verbal attack on each other which led quickly to a physical altercation between them. Claimant Kufner's part in the initiation and acceleration of this encounter was largely by way of provocative insult; Claimant Cottongame initiated the actual physical involvement in reaction to these provocations. Both are properly subject to severe condemnation for this highly irresponsible behavior.

In determining the degree of disciplinary penalty to be applied, Carrier may take into account the earlier record of the employee. In the case of Kufner said record was significantly adverse in respects pertinent to the instant charge.

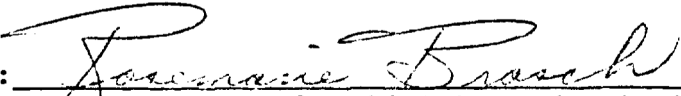
We need not reach consideration of additional controversy of whether Kufner falsified time report as charged (or used the misrepresentation thereon as a proper means of making a time claim, as contended by Employees). On the facts of record involving the altercation between these two employees, Carrier was entitled, under all the circumstances, to invoke the dismissal penalty.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of February, 1974.