

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: { System Federation No. 16, Railway Employees'  
Department, A. F. of L. - C. I. O.  
(Carmen)  
{ Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Current Agreement when they unjustly dismissed Carman R. I. Johnson, Jr. from its service by letter dated February 23, 1972 after formal investigation was held on February 8, 1972.
2. That accordingly, the Norfolk and Western Railway Company be ordered to restore Carman R. I. Johnson, Jr. to service with seniority rights unimpaired, and compensation at his applicable rate for all time lost, including vacation, health and welfare premiums, until restored to 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 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.

On February 23, 1972 following an investigative hearing Claimant was dismissed from the service of Carrier for physically assaulting his supervisor on February 1, 1972. The uncontroverted record indicates that on February 1, 1972 Claimant and his supervisor had an animated discussion regarding the parking of Claimant's automobile on Company property which ended with Claimant punching the supervisor in the face. There is conflicting testimony on the record as to whether the supervisor subjected Claimant to verbal abuse including racial epithets before he was struck.

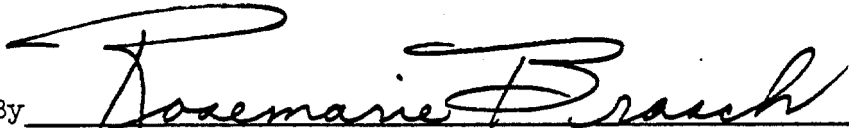
Under well established principles, it is not our province to resolve credibility issues where there is substantial evidence to support the findings of the hearing. See Awards 6372, 6408 et al. Nonetheless, even if arguendo we were to assume the veracity of Claimant's account we cannot thereby condone or countenance such physical violence on the supervisor. On this record and in these circumstances the discipline assessed cannot be deemed so arbitrary, unreasonable or unjust as to warrant our intervention. The claim must be denied.

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 3rd day of December, 1974.