

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties To Dispute: { International Association of Machinists
{ and Aerospace Workers
{
{ St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

Carrier erred when it discharged Machinist Helper Charles Mitchell, having failed to produce enough evidence to support the charges against him, and therefore should be ordered to reinstate him with seniority, reimburse him for wages lost, restore all fringe benefits and make him whole for all losses incidental to his dismissal.

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.

The charges against Claimant are that he violated Rule N of the Uniform Code of Safety Rules in that he was abusive, quarrelsome and vicious with and threatened bodily harm to Acting Supervisor T. E. Coleman and was abusive and quarrelsome with Plant Manager J. C. Renfrow. Rule N provides:

"Employes must not enter into altercations, play practical jokes, scuffle or wrestle on company property.

Employes must not be:

1. Careless of the safety or themselves and others.
2. Negligent.
3. Insubordinate.
4. Dishonest.
5. Immoral.
6. Quarrelsome or otherwise vicious."

We find there is substantial evidence in support of the charges that Claimant was abusive and quarrelsome with respect to the acting supervisor and the plant manager. The cases are legion to the effect that the Board will not interfere with a decision involving discipline where there is sufficient or substantial evidence in support. We are obligated to consider only the charges made and whether or not the Claimant is guilty of other violations under Rule N is not relevant.

The additional charge that Claimant threatened the acting supervisor with bodily harm merits separate consideration. Although the record may contain other threats, the one to be considered is derived from that part of the acting supervisor's testimony which reads:

"As we left the office I told Mr. Mitchell (the Claimant)
'I think you have lost your job'. He told me that if I
kept messing with him he would whip my skinny honky ass."

This statement attributed to Claimant was outside the hearing of witnesses and Claimant denies making it. It is Petitioner's view that there is nothing in the transcript supporting Carrier's charge of threatened bodily harm. We do not agree. While it is true that evidence of the threat is derived from the uncorroborated testimony of a supervisory employee involved, we believe the Carrier could rely upon it unless it was prompted by bad faith or some improper motive.

In Second Division Award 4981, Referee Harold M. Weston, a statement is made under "Findings" as follows:

"Carrier is entitled to rely on the observations of
its supervisory to employees and there is nothing in
the record to indicate that Conrad's testimony was
prompted by any improper motive or bad faith."

In this case the acting supervisor's statements and actions, verified by witnesses, manifested that he wished to avoid any trouble with Claimant and there is no indication of bad faith or improper motive on his part. The Petitioner's Rebuttal makes the same point: "In this case there was no motive or reason for an altercation with either of the complaining foremen, if so, it was never established."

Petitioner makes the point that the acting supervisor "injected an unnecessary statement, in fact a veiled threat into an already troubled situation when he stated "I think you have lost your job". We do not see it this way. Even if we assume the statement was unnecessary or gratuitous, it does not help Claimant because it was not a threat, veiled or otherwise. Claimant's quarrelsome conduct had already placed his job in jeopardy under Rule N and they were enroute to see the plant manager about that. In any event it is not for the Board to speculate about this statement. In the above quoted Award 4981, the Board made a further statement which is applicable here:

"It is not the Board's function to resolve conflicts in testimony and we will not disturb discipline case findings that are supported by credible, though controverted, evidence."

Lastly, Petitioner argues that the angry words were in the nature of "shop talk" which does not deserve this severity in punishment. It should be noted that this view was neither discussed nor argued on the property and it may be that it is not properly before us. In any event Claimant is not helped. The awards cited by Petitioner for the most part make the point claimed but they involved long service employees whose guilty actions resulted from provocative statements by supervisors or other provocative actions. These factors are not present here. It cannot be said the discipline imposed was arbitrary, capricious or unreasonable.

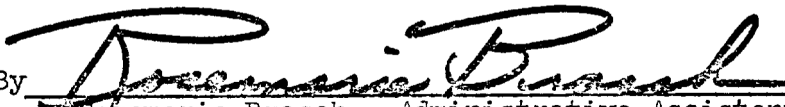
A W A R D

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 13th day of January, 1976.