

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

Parties to Dispute: (System Federation No. 97, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
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(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

- (1) That the Carrier erred and violated the contractual rights of the Claimant when he was removed from service on August 26, 1974.
- (2) That, therefore, the Claimant be returned to service with all rights, privileges and benefits restored and that he be compensated for lost wages.

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.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

Grievant was an electrical set-up apprentice in the San Bernardino, California shop of Carrier, working the 3:30 PM to 11:50 PM shift. Claimant was handed a notice at 6:05 PM on July 25, 1974, informing him that he was removed from service effective at the close of his regularly assigned shift (11:50 PM) that date. This removal from service resulted from an investigation on July 3, 1974, at which investigation Carrier found that Grievant and five (5) other employees had been drinking ripple wine with their lunches in the Company parking lot, while subject to duty, on June 20, 1974.

At approximately 7:35 PM on this same date (July 25, 1974), Claimant engaged in a fight or physical altercation with Carrier's Diesel Gang Foreman, Warren L. Burchett, who had been a key Company witness against Claimant in the earlier case.

Claimant alleges that Carrier's Foreman willfully struck him in the leg with a motor driven cart.

Claimant admits hitting the Foreman, and the record also shows the Foreman was knocked down by two (2) blows, and that Claimant then proceeded to kick him (the Foreman) in the back. As a result, the Foreman had to be taken to the hospital with a hematoma of the left eye, and bruises of the cheek and back.

Grievant then absented himself from his regularly assigned duties, for the remainder of his shift, without permission.

Petitioner alleges that Carrier committed a fatal error in permitting into the record, the written statement of Chuck Anchales, a non-employee, who allegedly witnessed the entire incident.

Such written statement is not a "fatal" defect, but is subject to the same limitations as other forms of hearsay evidence, namely, while it may be admitted, it should be carefully weighed, once admitted, for its probative value.

Furthermore, the Board can find no "fatal" error in the Carrier's "combining" this dispute with the earlier one in which Claimant was involved, as far as relating similar aspects in both cases, and declining both claims in one letter.

Turning now to the merits of the dispute in the instant case, it is inherent in the work relationship that personnel must conform to certain well-known, commonly accepted standards of reasonable conduct while on the job. Published rules and regulations are not necessary to inform an employee that misconduct such as fighting and foul language may subject him to discipline or discharge. An industrial plant or railroad shop is a place for the production of goods and the performance of work. While it is not a tearoom, neither is it a place for barroom conduct. Childish, uncontrolled, or irresponsible outbursts accompanied by physical or verbal assault cannot be

tolerated. Such behavior is not excusable because the offender is in an agitated emotional state. When an employee lacks the emotional stability and rational judgment to restrain himself from outbursts, he also lacks the minimum qualifications to be retained as a member of the work force.

Even if, for the sake of argument Claimant had been struck in the leg by the Foreman's motor driven cart (which was denied by the Foreman), Grievant should have done no more than was sufficient to defend himself. He should not have retaliated or fought back to the point of becoming the aggressor. Employees should use only the amount of force necessary to fend off the attacker, and at no time should they assume the offensive.

A review of the entire record in the instant case convinces us that there is substantial evidence to sustain a finding of guilty, and Carrier has not abused its discretion in imposing the penalty of dismissal for such a serious offense.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of September, 1977.

