

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. 22, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
(  
( St. Louis-San Francisco Railway Company

Dispute: Claim of Employes:

1. Carman R. L. Jones, Tulsa, Oklahoma, hereafter referred to as the Claimant, was removed from service as a result of an investigation conducted in Tulsa, Oklahoma, on September 10, 1975. Carman R. L. Jones was charged with violation in portion of Rule A, B and C of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employes.
2. It is noted that the Carrier has used Company rules in this investigation to arrive at the results they desired, to remove this employe from service, rather than the Agreement Rules contained in the mediated Agreement between the St. Louis-San Francisco Railway Company and System Federation No. 22, effective January 1, 1945, amended June 1, 1952, revised April 1, 1971. The Claimant does not remember some of the charges preferred against him. The Carrier has not proven beyond a reasonable doubt that the charges brought against the Claimant were correct.
3. The solution to this problem is simple and not excessive. The Claimant is requesting that he be restored to service and his 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 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.

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.

The record before us shows that Claimant twice used profane or vulgar language to his foreman when given an order. Claimant himself admits to this. Therefore, there is no question of Claimant's guilt,

Carrier's penalty does not appear to be discriminatory, unjust, unreasonable, capricious or arbitrary, since the record shows (1) that the language used by Claimant to his foreman was not done in an ordinary and conversational manner, but was spoken in anger, and intended to be degrading and an insult to the recipient; (2) Claimant used this language to his foreman in the presence of two (2) other employees, which makes it more likely that proper respect for foremen would be endangered by Claimant's behavior; and (3) this incident was not a first offense nor a single episode of misconduct. Claimant has been warned three (3) times before (July, 1972; August, 1972; and August, 1974) about his resentful attitude toward supervision. Therefore, we have no alternative but to deny the claim.

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 9th day of December, 1977.

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