

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: ( International Association of Machinists  
( and Aerospace Workers  
(  
( St. Louis-San Francisco Railway Company

Dispute: Claim of Employes:

1. That the St. Louis - San Francisco Railway Company unjustly withheld Machinist Apprentice Vincent D. Gibbs from service beginning March 5, 1976 and subsequently dismissed him from service on April 14, 1976 for allegedly violating Rules A and B of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employes on February 23, 1976 and for allegedly violating Rule C of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employes on February 24, 1976.
2. That accordingly, the St. Louis - San Francisco Railway Company be ordered to compensate Machinist Apprentice Vincent D. Gibbs at the pro rata rate for each work day beginning March 5, 1976 until he is reinstated to service. In addition, he shall receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.
3. A claim is also made for Machinist Apprentice Vincent D. Gibbs' actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits, including Railroad Retirement and Unemployment Insurance.
4. In addition to the money claimed herein, the Carrier shall pay Machinist Apprentice Vincent D. Gibbs an additional sum of 6% per annum, compounded annually on the anniversary date of said claim, in addition to any other wages earned elsewhere, in order that he be made whole.

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 letter of dismissal reads:

"You are hereby notified that as a result of formal investigation conducted with you by the undersigned in my office April 9, 1976 on charges that you violated Rule A, as it relates to altercations, and the first paragraph of Rule B, as it relates to quarrelsome or otherwise vicious conduct, of the Rules, Regulations, Safety Rules and Instructions Governing Mechanical Department Employes for your responsibility in connection with an altercation occurring at a point just north of the Frisco property line on Old Kansas Avenue, at approximately 4:05 P.M., February 23, 1976 wherein you displayed a firearm and threatened to do great bodily harm to Sheet Metal Worker Apprentice L. W. Crain and P. W. Catlett; and further charges that you violated Rule B, for your insubordination, and Rule C, account being absent from duty without permission for a period of approximately 30 minutes or more the morning of February 24, 1976 after having been instructed not to check out or leave the property without first seeing the undersigned, you are effective this date dismissed from the service.

You will be furnished a service letter upon request after fulfilling requirements incident thereto.

Please turn into my office all company property in your possession."

General Regulations (A), last sentence, reads as follows:

"Employes must not enter into altercations with any person, no matter what provocation may be given, but will make note of the facts and report to their immediate superior."

General Regulations (B) reads as follows:

"Employes who are negligent or indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves and handle their personal obligations in such a way that the railway will be subject to criticism and loss of good will, will not be retained in the service."  
/Emphasis added/

General Regulations (C) reads as follows:

"Employes must be alert, devote themselves exclusively to the service, give their undivided attention to their duties during prescribed hours, reside wherever required, and obey promptly instructions from the proper authority in matters pertaining to their respective branches of the service."

The Organization took exception to the manner in which the investigative hearing was conducted, since the hearing officer sent the letter of charges to the claimant prior to the hearing and also issued the letter of dismissal. Numerous previous awards have found no fault with this procedure in and of itself. In this instance, review of the record shows that the hearing was conducted in a fair and impartial manner and that the Claimant and his representative had more than ample opportunity to present a defense.

Instead, the Claimant chose not to respond to most of the questions addressed to him, stating simply that the matter was in civil court. As an employe facing disciplinary charges from his employer, the Claimant did little to help himself. As set forth in Third Division Award No. 19558 (Lieberman), in which the employe involved refused to respond to questions:

"We have stated in a number of similar cases that the rules of evidence in criminal proceedings are not applicable in disciplinary investigations. In (Third Division) Award 4749 we said: 'Employes charged with rule violations who avoid answers to questions touching upon the claimed offense, subject themselves to inferences that the replies if made would have been favorable to the Carrier.' At a hearing of this kind the Carrier may promptly examine the accused concerning every point bearing upon his innocence or guilty, whether or not he testifies in his own behalf. (Third Division) (Award 2945)."

As to the offense itself, as well as the severity of the discipline imposed, the Board has no reason to disturb the judgment of the Carrier. The record of the investigative hearing shows that four different witnesses saw the Claimant draw a gun on and threaten two fellow employes. As to the insubordination and neglect of duty which occurred on the following day, neither the Organization nor the Claimant offered any mitigating argument, and the Carrier's action in including this in the charges was reasonable and proper.

Further note must be taken, however, of the consideration that the gun-threatening occurred after working hours and removed from the Company's property. Do the disciplinary rules of the Carrier still apply in these circumstances?


There is much to be said for the right of privacy of an employe in his activities away from the employer's property and during non-working hours. Far more is involved here, however. The evidence from the investigative hearing is clear that the Claimant had the weapon in his possession before he left the Carrier's property and that the incident had its genesis on the property. Equally significant is that his threat was to two fellow employes. The Carrier is well within its discretion to believe a continuing threat remained for the two employes should the Claimant be permitted to continue working. Under these circumstances, the Claimant is not entitled to exemption from compliance with the rules applying to the relationship among employes. Further, the insubordination and unexcused absence from work on the following day occurred on the property, where no privacy defense could be raised.

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 24th day of January, 1978.