

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Chicago and Eastern Illinois Railroad Company

Dispute: Claim of Employees:

1. That the Chicago & Eastern Illinois Railroad unjustly withheld Machinist Lloyd Jensen from service beginning September 4, 1975 and subsequently dismissed him from service on September 8, 1975 for allegedly failing to comply with instructions issued to him by Foreman J. G. Hale and for making threats on Foreman Hale's life while working as Machinist on the 11:00 p.m. to 7:00 a.m. assignment, July 12, 1975.
2. That, accordingly, the Chicago & Eastern Illinois Railroad be ordered to compensate Machinist Lloyd Jensen at the pro rata rate of pay for each work day beginning September 4, 1975 until he is reinstated to service. In addition, he receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.

Claim is also made for Machinist Lloyd Jensen's 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.

In addition to the money claimed herein, the Carrier shall pay Machinist Lloyd Jensen 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.

Claimant was dismissed following a hearing held on September 4, 1975, where he appeared under the following charge:

"to develop the facts and place your responsibility, if any, in connection with the charge that you failed to comply with instructions issued to you by Foreman J. G. Hale and for making threats on Foreman Hale's life while working as a Machinist on the 11:00 P.M. to 7:00 A.M. assignment, July 12, 1975.

Among other procedural objections, the Employees contend that Carrier's Superintendent did not deny the claim as is required by the provisions of the August 21, 1954 National Agreement. The Superintendent's letter of November 12, 1975 stated:

"After careful review of the transcript of this investigation I am not agreeable to reinstating Mr. Jensen to the service of the Chicago and Eastern Illinois Railroad. Your request for reinstating Mr. Jensen and claim for time lost is respectfully declined."

We find that this letter, as well as a substantively similar letter written by Carrier's General Manager when the claim was appealed to him, met the requirements of Article V. (Third Division Award 21342, BMWV vs. C&EI).

After reviewing all of the other procedural issues raised by the Employees, we have concluded that Claimant was afforded a fair and impartial hearing and that in all respects, none of his procedural rights were violated.

Turning to the merits, we find there to be substantial evidence that Claimant failed to follow the instructions of his Foreman, J. G. Hale, and that he also voiced threatening and abusive language to Mr. Hale. This Board has consistently recognized that employees must obey the orders of their superiors and grieve later if they believe such orders are improper. Further we have consistently recognized that the workplace is not a debating society and that employees must not be argumentative, abusive or threatening to their superiors. Employees who commit such transgressions subject themselves to serious discipline, and we have frequently held that permanent discharge is not too severe a penalty in such cases.

In considering Claimant's case, we have noted that in his over four years of employment with Carrier, there is no evidence in the record that he had previously been disciplined for any misbehavior. We have also considered that the primary purpose of discipline is to teach employees - and not to over severely penalize them. Given all the foregoing, we conclude that, in Claimant's case, the discipline has now served its

purpose and he should now be reinstated to service but with no pay for time lost. We must warn Claimant that should he ever, in the future, commit an offense similar to the one here in dispute, we will not look so favorably upon a request for reinstatement. We expect that if Claimant elects to return to service, he has now learned his lesson and will behave in a civil, gentlemanly and cooperative manner.

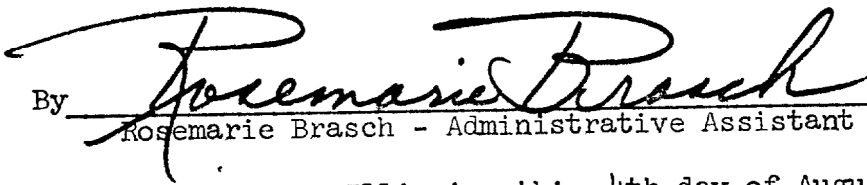
A W A R D

Claim sustained to the extent indicated in the opinion.

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 4th day of August, 1978.