

Safety Rule 106

"Employees who are dishonest, immoral, vicious, quarrelsome, uncivil in deportment or who are careless of the safety of themselves or of others will not be retained in service."

An investigative hearing was held on February 18, 1976 at which time Claimant presented evidence and testimony germane to his position. Predicated upon Carrier's findings and conclusions thereof, he was subsequently notified by letter, dated March 8, 1976, that he was dismissed from service.

This Board recognizes the importance of administrative due process and accordingly has carefully reviewed the record to insure that said investigative proceeding was properly conducted. We find nothing therein that indicates claimant was disadvantaged. Perhaps the seating arrangement warrants some form of admonitory notice, but the substantive determination of this dispute was not affected by the participants seating arrangements.

The specifications, however, against Claimant are indeed serious and inevitably raise the threshold question of whether or not he was dishonest. He had an opportunity to return the billfold on January 20, 1976. He did not do so. In fact, it was discovered a week later on January 28, 1976, when he was stopped by a New Jersey State Policeman in connection with a motor vehicle violation. Surely, the totality of his conduct did not epitomize excusable behavior. On the contrary, it was blatantly dishonest. Such deportment is clearly unacceptable in this industry.

The Second Division has long held dishonesty to be a dismissal offense. We find nothing in the record of a mitigative nature to warrant a lesser consideration herein.

We will sustain the dismissal.

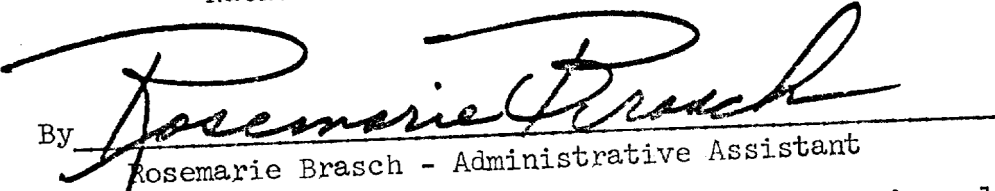
A W A R D

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 6th day of December, 1978.

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: ( System Federation No. 99, Railway Employees'  
( Department, A. F. of L. - C. I. O.  
( (Carmen)  
( Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Car Inspector R. L. Whittington was unjustly dismissed from the service of the Illinois Central Gulf Railroad on December 30, 1976.
2. That accordingly the Illinois Central Gulf Railroad be ordered to reinstate Car Inspector R. L. Whittington to service with seniority unimpaired, be paid for all time lost, and any and all other benefits such as hospital and various other insurance benefits, vacation rights, etc., he would be entitled to under all existing Agreements had he remained on the job.

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.

Carrier's letter dated December 6, 1976 sets forth the substantive misconduct charges preferred against Claimant which are quoted in pertinent part hereinafter:

"At this investigation you are charged with your responsibility, if any, in connection with your laying off on your regular assigned work day, December 3rd, 1976, without permission, resulting in another Carman being called in your place. In addition you are charged with showing up at your work location in an intoxicated condition at approximately 9:00 P.M. on the same day and becoming

"belligerent and abusive with fellow employees and getting involved in a scuffle with Mr. L. Farris. In addition, you are charged with threatening Car Foreman K. M. Harris."

Accordingly, an investigative hearing was held on December 18, 1976, whereby Carrier found Claimant guilty of the aforesaid specifications and dismissed him from service on December 30, 1976.

Claimant appealed this determination to the Board after exhausting appropriate Agreement dispute resolution procedures.

Our painstaking review of the record indicates that Claimant precipitated the aggressive disturbances. The whole course of the argumentative and bellicose exchanges stemmed primarily from his actions. While we are aware of his defensive assertions that his behavior was adversely influenced by medicinal causes, we have no credible proof that he was, in fact, on medication. The record does not show that on the date he allegedly took such excessive medication, he was under a physician prescribed regimen. There was no confirmatory evidence on this point. Moreover, the medical letters were written well after the fact. His behavior was just plain unacceptable.

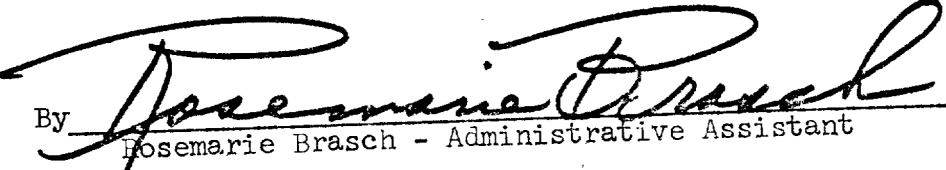
This Board has consistently held such deportment to be a dismissal offense. But we are mindful of Claimant's twenty-four (24) years service with Carrier. Because of this long service tenure, we have chosen to grant him one (1) last chance to return to his position. We hope that he will have learned from this experience, the categorical necessity for disciplined workplace decorum. There will be no second chance if he repeats this behavior. We will not, however, given the gravity of the offense, award him back pay.

A W A R D

Claim sustained to the extent expressed in the Findings.

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 6th day of December, 1978.