

The Second Division consisted of the regular members and in addition Referee Rolf Valtin when award was rendered.

Parties to Dispute: (System Federation No. 109, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement Fuel Operator (Laborer), Robert Colley, Elizabeth Locomotive Shop, Elizabeth, New Jersey, Consolidated Rail Corporation, was unjustly suspended from service of the Carrier on date of March 20, 1976 and subsequently dismissed from Carrier service as a result of investigation held on date of April 6, 1976.
2. That accordingly, Mr. Robert Colley be made whole, restored to Carrier service with all seniority rights, holidays, sick leave benefits that are a condition of employment unimpaired, and compensated for all lost time as a result of such unjust suspension, also reimbursement for all losses suffered account loss of coverage under health and welfare and life insurance agreements during the time held out of service.

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 claimant, a Laborer with about 19 years of service, was discharged as of March 20, 1976. At the time of the incident leading to his discharge, the claimant was employed as a Fuel Operator in the Elizabethport Enginehouse at Elizabethport, New Jersey. He was discharged on the following charge:

"Insubordination to Foreman E. Szpila and violation of General Rule K, 2nd Paragraph, March 20, 1976."

The record leaves no reasonable question that the claimant was guilty of both verbal and physical abuse against the foreman. Apparently angered over the fact that the foreman declined to excuse him from work on the night in question, the claimant cursed the foreman, deliberately shoved him, and then knocked the phone from his hand and spilled his coffee when he (the foreman) called the police. The claimant's conduct was witnessed by two other employees and was partially overheard by the police officer at the other end of the phone. All three persons corroborated the foreman's testimony at the hearing.

We are proceeding with awareness of the claimant's long service with the Carrier. For two reasons, however, we do not believe that we can legitimately let it operate to overturn the discharge. One is the extreme nature of the claimant's offense on the night in question. The other is that the claimant had been guilty of serious insubordination about a year earlier and had received a 15-day disciplinary suspension for it.

We overrule the Organization's contention that the written charge on the basis of which the claimant was discharged lacked sufficient specificity. As shown, the charge gives the name of the foreman and the date of the incident. In the light of what happened, there could not conceivably have been any uncertainty as to the grounds for the discharge.

We also reject the Organization's contention based on the multiple roles of the hearing officer. We recently had occasion to deal with a similar contention -- namely, in Award No. 7611. We refer the parties to the discussion of our approach in a contention of this sort. We again conclude that the facts and circumstances in the present case do not form a sufficient foundation for a holding that the discharge is defective for lack of a fair and impartial hearing. We note that the claimant had to be removed from the hearing for his unruly conduct and that his representative affirmed the propriety of the hearing.

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 4th day of April, 1979.