

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

Parties to Dispute: { Sheet Metal Workers' International Association
{
{ Illinois Central Gulf Railroad

Dispute: Claim of Employes:

1. That, under the controlling Agreement, Sheet Metal Worker, Michael W. McAdams, was unjustly suspended from service on November 5, 1976, pending an investigation that was held on November 16th and 17th, 1976 and dismissed from service on December 1, 1976.
2. That accordingly, the Carrier be ordered to reinstate Claimant to service, seniority rights unimpaired and pay him all wages lost as a result of his dismissal.
3. In additiona, make Claimant whole for all losses.
4. Compensate the Claimant for all overtime losses.
5. Make Claimant whole for all holiday and vacation rights.
6. Pay premiums on health and welfare, Travelers' Policy GA23000.
7. Pay Illinois Central Hospital Association premium.
8. Pay all sickness premiums under Providence Insurance Policy.
9. Pay interest of six (6) percent on all lost wages.
10. Remove all charges brought against Claimant from his personal record.

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 suspended from service November 5, 1976 prior to an investigation hearing held on dates of November 16 and 17, 1976. Claimant was charged with having made two telephone calls to the Woodcrest Shop Superintendent's home, threatening the Shop Superintendent's life. Additionally, Claimant was also charged with threatening the life of fellow worker in a separate but apparently related incident. Claimant was notified by letter dated December 1, 1976 and signed by the hearing officer that he had been found guilty of the charges and effective as of December 1, 1976 he was dismissed from the service of the Carrier.

The following is a chronological account of the factual background of the instant case. On the afternoon of October 20, 1976 at approximately 3:08 and 3:40 PM, respectively, two anonymous phone calls were received at home by the wife of the Woodcrest Shop Superintendent in which the caller apprised the wife her husband was in trouble, that a contract was out on him and that he was going to die. The Shop Superintendent's wife immediately notified her husband of the calls and he in turn notified the Carrier's police and special services department. On October 23, 1976, the Shop Superintendent reported to special agents that shortly after noon that day another anonymous telephone call had been placed to his residence, but that this time there was silence and then the caller hung-up. On October 29, 1976, Special Agent Weinstock, apparently as a result of his investigation to date, picked up three employees of the Carrier for the purpose of having them take a polygraph test concerning the anonymous phone calls to the Shop Superintendent's residence. The Claimant was among these three employees. Each of the three employees were given the polygraph test which was administered at the offices of J. R. Davis Associates, Inc. Of the three employees, two were apprised they passed the test and the remaining employee, the Claimant, was apprised he had failed the test. The Claimant requested he be re-tested and was so accommodated, though he failed the test a second time. Distraught from the polygraph session which lasted between two and three hours, the Claimant upon returning to the shop, requested and was granted a thirty (30) day leave of absence to obtain medical care.

On October 31, 1976, the Claimant happened upon one of the other employees who had taken the polygraph test, in a lounge/bar and allegedly pulled a gun on him and threatened the co-worker's life. Testimony from the record indicates Claimant's motives for doing this was based on a belief by Claimant, that his fellow worker was to blame for Claimant having lost his job and also causing Claimant's best friend to be down on him. On November 1, 1976, the co-worker whose life had been threatened the night before, reported the incident to Special Agent Weinstock. Special Agent Weinstock immediately contacted the local police department and together, the police and Special Agent Weinstock proceeded to the Claimant's residence where he was put under arrest. According to Special Agent Weinstock, at the time Claimant was arrested, Claimant's living room contained a shot gun with shells on the seat of a chair, newspaper all over the floor, a pair of scissors and several cut out areas in the newspaper and scotch tape. At the police station, Claimant was charged with assault, unlawful use of a weapon and

disorderly conduct. The first two charges arose from the incident at the bar on October 31, 1976 and the latter charge arose from the two threatening telephone calls of October 20, 1976. After being charged, Claimant was subsequently released on bond.

On November 5, 1976, Claimant attempted to report for work at which time he was suspended from service pending a formal investigation. Claimant was dismissed from the service of the Carrier effective December 1, 1976. On December 22, 1976, all three charges sworn against the Claimant on November 1, 1976 were dismissed by the Circuit Court of Cook County.

The Organization takes the position Claimant was unjustly dealt with as Carrier denied him the protection and benefits of Rule 37 and 39 respectively, under the controlling collective bargaining agreement. The Organization maintains that such denial of protection and benefits resulted basically from the following: the charges against the Claimant failed to include a statement alluding to any rule or rules set forth by the collective bargaining agreement which allegedly were violated; Carrier acted unjustly when it suspended Claimant prior to holding the investigatory hearing; Claimant did not receive a fair and impartial hearing as Claimant was prejudged by the hearing officer. Carrier arrived at conclusion Claimant was guilty as charged based not on any direct positive evidence but rather on a combination of assumption, conjecture, speculation and suspicion; and the assessment of discipline was completely arbitrary.

Further, the Organization protested at the investigation that since Claimant's alleged actions were not violative of either Shop Superintendent's rules or of any agreements between the Union and the Carrier, that the matter under investigation properly belonged under the jurisdiction of the law of courts rather than under the jurisdiction of Unions and Railroads. The Organization asked the Board to take special note that the Claimant was cleared of all charges by the Court and the case was thereby dismissed.

The Carrier maintains that it did not violate either Rule 37 or Rule 39 of the controlling agreement either when it assumed jurisdiction over the matter in question nor when it suspended Claimant prior to conducting the investigatory hearing. The Carrier contends the Claimant received a fair and impartial hearing and was not in any way prejudged by the hearing officer. The Carrier takes the position that an acquittal in civil court in no way absolves an employee from being accountable to the employer for his conduct in connection with offenses which the employer deems extremely serious. Finally, the Carrier holds that the evidentiary record is substantial and that in light of having ascertained Claimant's guilt in the instant case, the discipline of dismissal was justified.

This Board finds the Carrier did not violate either Rule 37 or Rule 39 of the controlling agreement and therefore, did not act improperly when it assumed jurisdiction of the matter in question. It is a generally accepted principle in the field of labor relations that an employee shall be held accountable

for their conduct during off hours from work and while off company premises if said conduct shall cause to have a negative and detrimental impact on the employer-employee relationship. In such cases, where off-duty conduct becomes an issue, the Company has the right to assume jurisdiction of the matter even though the conduct in question cannot be said to be violative of any specific rule, regulation or clause of either the controlling agreement or any other compacts between the Union and the Company. Further, the employer retains the right to jurisdiction of such matters notwithstanding the fact that other societal institutions such as courts of law may also legitimately claim jurisdiction. In the instant case, the Board notes that Claimant's civil behavior away from the company premises, the subject of which is here under scrutiny, involved both a company official and another of the company's employees. It is clear to this Board from the foregoing discourse that Carrier rightfully assumed jurisdiction of the matter in question.

Carrier was also within its contractual rights when it moved to suspend Claimant prior to conducting an investigatory hearing. There are numerous awards of the Adjustment Board which hold that when the alleged offense is a serious one, Carrier has unquestioned authority to remove the suspected employee from service pending an investigation. (See First Division Awards 20 163, 16 406, and 19 477). Indeed, the language of Rule 39 of the controlling agreement, effective April 1, 1935 and last amended, October 1, 1969, is quite clear in its meaning and intent regarding such authority. Rule 39 reads in relevant part as follows:

"Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule."

This Board finds that the instant case appropriately falls within the scope of "proper cases" as contemplated by the language of Rule 53. The Board further finds that Claimant was afforded a fair and impartial hearing and was not prejudged guilty by the hearing officer.

The Board concurs that the evidentiary record in the instant case is primarily circumstantial in nature. However, the Board agrees that it is possible in certain instances to compile a substantial record based on inferences drawn from all of the prevailing circumstances. While proof positive does not exist regarding Claimant's involvement in the alleged acts, the record nevertheless reflects a pattern of behavior on the part of Claimant highly questionable and beyond mere coincidence. While this Board recognizes polygraph results are inadmissible in a court of law for various reasons, the Board also notes for the record, that investigatory hearings and court proceedings are two different forums. Therefore, even recognizing the flaws associated with polygraph evidence, this Board finds it must accord some weight to the polygraph results in the instant case. Those results concluded that the Claimant was not telling the truth regarding the questions concerning the two threatening telephone calls. The Board notes also that Claimant supposedly requested and took the polygraph test voluntarily and also that Claimant was afforded the opportunity to repeat the test more than once

with no different results. The Board finds even more damaging, testimony by Special Agent Weinstock, concerning the several items of a shot gun, gun shells and parts of cut-up newsprint observed in Claimant's living room on the date of his arrest. The Board notes this testimony was never refuted anywhere in the record. In addition, the Board notes the potential alibi of Claimant when he requested a medical leave of thirty (30) days but attempted to return to work less than one week later, which was also several days after he had been arrested. Claimant's several bouts of drunken behavior have also been duly noted by this Board.

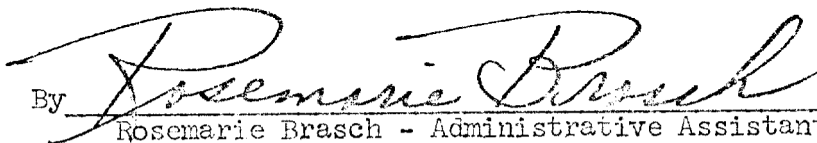
Finally, we note that Claimant was acquitted in a court of law on the very same charges as those being here reviewed. As the standard of proof used in court proceedings is of a greater weight than that which is applied in investigatory hearings, we find Claimant's acquittal not particularly persuasive given the evidentiary record before us. Thus, we rule the evidence though circumstantial, to be substantial enough to warrant a denial of 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 - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of June, 1979.