

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

Parties to Dispute: (System Federation No. 106, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Washington Terminal Company

Dispute: Claim of Employees:

1. That the Washington Terminal Company violated the controlling agreement when they removed from service and subsequently dismissed Car Cleaner Linder Bush as a result of a hearing held on August 31, 1977.
2. That accordingly the Washington Terminal Company be ordered to return him to the service with seniority and vacation rights unimpaired and be compensated for all time lost since July 23, 1977.

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 the subject of an investigative hearing charged with the following violations:

- "1. Violation of General Rule 'O' No employee will be absent from duty without permission, when you were off your assignment from approximately 9:30 a.m. until 3:00 p.m. Saturday, July 23, 1977.
2. Violation of General Rule 'O' No employee will be absent from duty without permission when on Sunday, July 24, 1977 after arguing with your supervisor, you walked off the job without permission.

- "3. Violation of General Rule 'K' Employees, while on Company property, must be courteous and orderly when on Sunday, July 24, 1977, you were argumentative and belligerent towards your supervisor.
4. Violation of that part of General Rule 'N' Insubordination when on Sunday, July 24, 1977 when at approximately 8:00 a.m. to 8:40 a.m., you argued and were belligerent with your supervisor and refused to go to your position as instructed by your supervisor.
5. Violation of that part of General Rule 'N' Participating in an unauthorized and unnecessary activity while on duty or while on Company property is prohibited when at approximately 8:50 a.m. Sunday, July 24, 1977, you threatened your supervisor by stating you would take care of him after 4:00 p.m."

The hearing was conducted in a fair and proper manner, and as a result of the hearing, the Claimant was dismissed from service on September 22, 1977. He had been hired by the Carrier on March 2, 1976 and had a previously clear disciplinary record as a Car Cleaner. The Organization argues that the Claimant was treated in an unfair, capricious and unjust manner by five supervisors during the course of events on July 24, 1977, and that the disciplinary action is therefore improper.

A careful examination of the record shows that this is not the case. On July 24, 1977, Claimant was called to the office of his Foreman to account for his time while he was supposed to be working the previous day. The argument, threats, and general commotion which resulted with the Foreman and other supervisory personnel was properly judged by the Carrier to be of the Claimant's making. He obviously lost control of himself, leading to a series of events recounted in the record of the investigative hearing and which does not need repetition here.

As to July 23, 1977, this appears secondary to the principal cause for the Claimant's discipline. Having reasonably concluded that the Claimant had absented himself from his first assignment and made himself unavailable for further work assignments (even if he had apparently remained on the property), the Claimant's supervisor would not sign his time card to certify that he had performed work that day. It was this which led to the confrontations on the following day. Although being "absent from duty" on July 23, was one of the charges, it was not the subject of independent disciplinary action outside the framework of what occurred the following day.

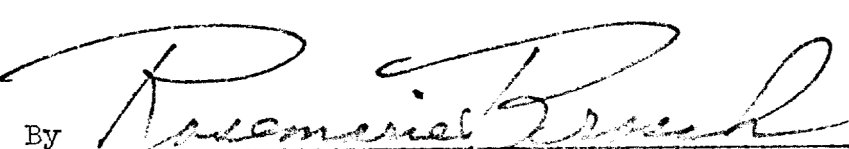
Claimant's argumentative and insubordinate conduct on July 24, 1977, was clearly not acceptable and properly makes him subject to a substantial disciplinary penalty. In reviewing the record, however, the Board finds that the penalty of dismissal is overly severe. All of the events of July 24 were of one piece and indicate an employee going from bad to worse as he (quite improperly as to manner) sought redress for the failure (probably justified) of the supervisor to sign his time card the previous day. The Board will order the Claimant's reinstatement without back pay. What results is an extended disciplinary suspension, which becomes part of the Claimant's record as the most severe caution against similar future conduct.

A W A R D

Claim sustained to the extent that the Claimant shall be promptly restored to service with seniority unimpaired, but without back pay or other retroactive benefits.

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 27th day of September, 1979.