

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. 99, Railway Employees'
{ Department, A. F. of L. - C. I. O.
{ (Firemen & Oilers)
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That M. D. Lewis was unjustly removed from service on November 12, 1977 and was dismissed from service on December 5, 1977.
2. That accordingly, the Illinois Central Gulf Railroad be ordered to return Laborer M. D. Lewis to work immediately with pay for all time lost since November 12, 1977, with restoration of full seniority and all benefits he would have been entitled to had he not been dismissed from 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.

Claimant is a Laborer who entered service on February 8, 1977. Because of his actions on November 11-12, 1977, the Claimant was suspended from service on November 12, 1977 pending investigation. There followed an extensive investigative hearing, after which the Carrier judged the Claimant guilty of four of the five charges against him and dismissed him from service on December 5, 1977.

The Organization argues that the hearing was improperly conducted because the Claimant did not have the opportunity to cross-examine the Carrier's witnesses. The Board finds the investigative hearing record barren of any objection on this issue. Further, the record shows that Claimant's representatives exercised extensively the right to cross-examination, and there was no specific denial of the Claimant's right to do so if he had so chosen. The investigative hearing was conducted in a fair and proper manner.

The charges forming the basis for the Claimant's dismissal were failure to obey instructions of a supervisor; use of abusive language toward a supervisor; insubordinate action toward the Assistant Master Mechanic; and "vicious" conduct toward the Assistant Master Mechanic. Each of these was fully explored at the investigative hearing, with the Claimant making some denials and some admissions. The Board finds no basis on which to fault the conclusions drawn by the Carrier that Claimant's actions on November 11-12, 1977 constituted unacceptable conduct as an employe.

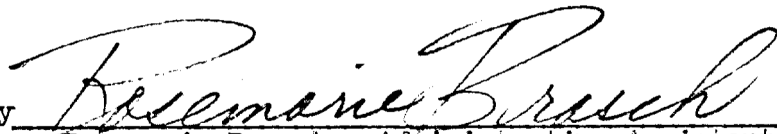
Under the circumstances, the withholding of the Claimant from service pending the investigation was appropriate, and the penalty of dismissal was reasonable, in and of itself. As additional support for the severity of the penalty, the Claimant's numerous and frequent instances of previous disciplinary action would lend support, if needed.

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 9th day of January 1980.