

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. 114, Railway Employees'  
                          { Department, A. F. of L. - C. I. O..  
                          { (Firemen & Oilers)  
                          { Western Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current agreement Firemen and Oiler Morris N. Mustin, was unjustly dismissed from the service of the Carrier on June 23, 1978.
2. That accordingly, the Carrier be order to:
  - (a) Restore the aforesaid employee to service with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6% interest added thereto.
  - (b) Reinstate all vacation rights to the aforesaid employee.
  - (c) Pay employee's group medical insurance contributions, including group medical disability, dependents Hospital, surgical and medical and death premiums for all the time that the aforesaid employee is 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 employee or employees involved in this dispute are respectively carrier and employee 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 dismissed from service by the Carrier on June 23, 1978 for "uncivil, ungentlemanly, intemperate deportment" and for "threatening statements" made to the Shop Superintendent. Dismissal followed a fair and properly conducted investigative hearing in which the Claimant was represented and also took a particularly active part himself.

The Board finds no basis to conclude that the Carrier made any improper judgment as to the facts developed at the hearing; nor does the Board find the resulting penalty inappropriate.

During the hearing, the Claimant denied making an improper and threatening telephone call to the Shop Superintendent. Testimony by the Shop Superintendent established to the Carrier's satisfaction (and the Board's) that the call was indeed made. Quite apart from this, the Claimant freely admitted (and repeated several times during the hearing) that he had used abusive and threatening language several days later to the Shop Superintendent.

The Claimant set forth his belief (based on entirely circumstantial evidence) that the Shop Superintendent had revealed his location (a doctor's office) to the local police, who were seeking the Claimant for non-work related matters. Even if this were the case (and the Shop Superintendent convincingly denied it), this would be no justification for the threats made to the Shop Superintendent by the Claimant.

The threats involved cannot be dismissed as mere "shop talk", since they were repeatedly directed at a management person clearly in work authority over the Claimant. Such action strikes at the heart of ongoing employer - employee relationships, and the Carrier cannot be gainsaid in refusing to permit its continuance.

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 16th day of January 1980.