

The Second Division consisted of the regular members and in addition Referee George E. Larney 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 under the current agreement, Car Cleaner Kevin Blake, was unjustly dealt with when he was dismissed and dropped from the rolls and seniority roster of the Washington Terminal Company August 29, 1977 after being held out of service since July 29, 1977.
2. That accordingly the Washington Terminal Company be ordered to return Car Cleaner Kevin Blake to the service of the Washington Terminal Company with seniority and vacation rights unimpaired and compensated for all net time lost since July 29, 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, Kevin Blake, a Car Cleaner at Carrier's Washington Terminal Coach Yard located in Washington, D. C., was dismissed from service on August 29, 1977, following a formal investigation held on August 10, 1977, in which he was adjudged guilty as charged of "conduct unbecoming an employee".

On Friday morning, July 29, 1977, at about 8:00 AM, Claimant proceeded to park his automobile illegally in the area at the block of the Material Storage Track in the Washington Terminal Coach Yard. Immediately after parking the vehicle, Claimant was approached by Washington Terminal Police Officer, Robert L. Crayton who requested that he move his automobile. Claimant allegedly responded in an insubordinate and abusive manner using language of an invective nature and refused to move his automobile. Claimant left his vehicle parked illegally and proceeded to the coach yard office. Approximately twenty (20) minutes later, Officer Crayton went to the coach yard office to make inquiry as to why Claimant had not as yet moved his automobile. Officer Crayton located Claimant on his way out of the coach yard office and at that point Claimant had stopped to engage in some conversation with some other people. Officer Crayton again asked Claimant to

move his automobile to one of the designated authorized parking areas near the Coach Yard Building, but to no avail. Being persistent, Officer Crayton issued several more requests to move the automobile to which Claimant allegedly responded each time in an ever increasingly hostile and antagonistic manner, swearing at Officer Crayton and vowing at one point while on his way back to his automobile, that he would "get" Officer Crayton. Claimant then entered his vehicle and instead of making a U-turn to leave the area, he maneuvered the automobile in such a way as to run Officer Crayton down. As Officer Crayton attempted to jump from the path of Claimant's onrushing automobile, the left front fender of the car brushed Officer Crayton's right arm and hand and the vehicle's left door handle struck the back of his right hand. The impact of being struck by the vehicle caused Officer Crayton to be spun around and knocked against the side of a rail coach car parked on the tracks, momentarily stunning and disorienting him. Believing that Claimant's action of hitting him with his vehicle was deliberate, and fearing that Claimant, although now moving away from him, would change direction in an attempt to run him down a second time, unholstered his service revolver and fired three shots at Claimant's moving automobile. Later investigation by the Metropolitan Police Department revealed that none of these three shots either struck the Claimant or his automobile. The Claimant, although having been fired upon, continued to operate his vehicle and drove out of the Coach Yard area. Immediately following the incident, Officer Crayton telephoned his Supervisor and reported what had happened. Officer Crayton was subsequently transported to Capitol Hill Hospital where he was treated for a bruised right hand and wrist diagnosed as not serious and then released.

Upon a thorough review of the record, this Board determines that the Claimant received a fair and impartial hearing. Furthermore, we believe a preponderance of the evidence clearly supports the allegations made against Claimant regarding his conduct, demeanor and subsequent actions on the morning of July 29, 1977. Frankly, we deem Claimant's behavior to have been utterly reprehensible under the surrounding circumstances and therefore we find the discipline of dismissal imposed here to be quite proper and appropriate.

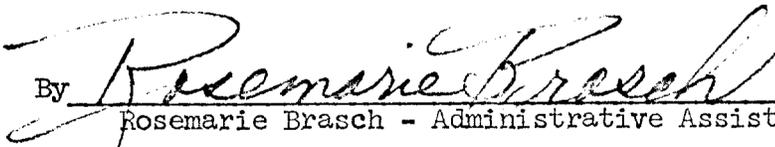
A W A R D

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 20th day of February, 1980.