

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

Parties to Dispute: { International Association of Machinists
 { and Aerospace Workers
 {
 { Missouri Pacific Railroad Company

Dispute: Claim of Employee:

Claim for Machinist Helper B. W. Jacobs for payment at the pro rata rate on his initial assignment plus the punitive rate of pay for overtime for which he would have been available, compensation for medical, dental and life insurance under the applicable negotiated Agreement, plus 7% per annum interest until the dispute is settled, for the Carrier having violated Rule 24 of the controlling Agreement effective August 1, 1969, as amended.

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.

An investigative hearing was held on July 21, 1977 to develop the facts regarding Claimant's alleged use of foul and abusive language and attempt to provoke a fight by assaulting and threatening fellow employees on June 29, 1977. Claimant was found guilty of violating General Rules E and N of the Uniform Code of Safety Rules and Item 5 of the Conditions of Employment and dismissed from service, effective August 1, 1977. This disposition was appealed on the property and the original claim filed on August 31, 1977, was subsequently modified to the instant claim after Carrier reinstated him, without pay for time lost, on July 17, 1978.

In reviewing this case, we find no basis for concluding that the Notice of Investigation dated July 9, 1977 was improperly executed when it did not contain the aforesaid Safety Rules. The Notice contained sufficient substantive data to permit Claimant the opportunity to prepare an intelligent defense. There was no ambiguity vis the purpose of the investigation.

Claimant engaged in behavior that was palpably unacceptable and the record explicitly supports this finding. We recognize, of course, the circumstances that surrounded his deportment and can understand how a provocative incident could precipitate a self protective response. But an analysis of the investigative transcript does not reveal that Claimant's threatening and disruptive manifestations were at all justified. He used profane and abusive language toward the Hostler and threatened to strike him with his clinched fist. It was witnessed by neutral observers and necessitated the active intervention of the General Foreman. Surely this type of conduct cannot be tolerated in an industry that is vested with a public interest responsibility. Claimant's vitriolic and aggressive actions were clearly impermissible and contrary to Carrier's pertinent safety regulations. He should be appreciative that he was eventually reinstated to service, since this Division has invariable sustained dismissal penalties for like offenses. Accordingly, we must deny the claim.

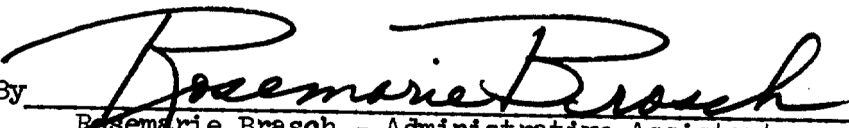
A W A R D

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 2nd day of April, 1980.