

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

Parties to Dispute: { System Federation No. 99, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)

Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That, under the current Agreement, Carman C. R. McKissick was unjustly dismissed from the service of the Carrier September 30, 1977 and thereby deprived of his seniority as Carman and his right to work in a safe place to make a living.
2. That, accordingly, the Carrier be ordered to reinstate the aforementioned to service with all seniority rights, vacation rights, holidays, pass privileges, hospitalization unimpaired and to compensate Mr. McKissick additionally for all time lost subsequent to September 30, 1977, plus six percent (6%) annual interest.

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 dismissed from service, effective September 30, 1977, following an investigation held on September 21, 1977 to determine the extent of his alleged responsibility for fighting on company property at Laurel, Mississippi on September 16, 1977.

This disposition was appealed and Claimant was subsequently offered an opportunity to return to service without back pay, but refused it and decided to progress the dismissal penalty to this Division. Upon a careful review of the investigative transcript, particularly the precise causative factors underlying the incident, we find sufficient evidence of record to conclude that Claimant's impermissible and thoughtless racial remark "nigger" in the immediate presence of a black employee substantially contributed to their physical altercation later that day. The record shows that his overall course of conduct was plainly provocative and eventually precipitated the needless dispute. This finding, by no means, exculpates Carman Apprentice Jones, the co-belligerent in this matter, but the fighting would probably not have occurred, but for the initial racial slur.

The efficient administration of a railroad demands as a basic precondition, the undivided attention and efforts of its employees if it is to meet its many public service goals. These imperative requirements will not be met if contentious and physically prone employees are permitted to disrupt operations. A palpably insulting racial epithet is not an insignificant matter, if it inevitably results in combative behavior.

We believe that Claimant's dismissal to date was sufficient punishment for his inexcusable deportment, although this is plainly a serious offense, and thus we will restore him to service without back pay. We hasten to add, however, that we will not look kindly upon any kind of recidivist behavior and anticipate that he will conduct himself in an appropriate and upright manner.

A W A R D

Claim sustained to the extent expressed herein.

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.