

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { Sheet Metal Workers' International
 { Association
 {
 { Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

That all reference to this investigation be stricken from the above claimant's record. That the Carrier would, therefore, immediately reinstate Pipefitter, Mr. W. E. Brooks and compensate him for all time lost beginning from December 21, 1977, the date he was improperly withdrawn from service, make him whole for seniority rights, vacation rights, sick benefits, health and welfare and life insurance benefits and any other benefits he would be due had he not been improperly dismissed from the service of the Carrier.

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, Willie E. Brooks, was notified by letter dated December 27, 1977, to appear for a formal investigation on December 30, 1977, to determine "whether or not you were insubordinate and threatened Mr. J. Curtis, Electrical Foreman on December 21, 1977, at approximately 3:45 P.M." For good and sufficient reasons on the parties' part the investigation was postponed and held on January 12, 1978. Following the hearing, the action herein complained of was taken by the Carrier on January 30, 1978.

The organization raises certain procedural defects. First, they allege that the charges were defective because they did not point to a rule violation. No such claim was made during the discussions on the property and therefore need not be considered here. Additionally, it alleges that the investigation was not fair and impartial. The organization raised no such objections during the proceedings and it is therefore barred from pressing such claim. The record indicates that all parties were given ample opportunity to state positions, present witnesses, cross examine and introduce evidence. This Board concludes that the hearing was conducted in accordance with statutory requirements and past practice.

On the date under consideration claimant arrived at his work assignment on the dispatch track approximately forty-five minutes late. He was questioned by the Electrical Foreman regarding his late arrival and a verbal altercation ensued. There is some conflict in the record with regard to events which immediately transpired. The foreman claims he was verbally threatened and claimant was loud and obnoxious. Claimant, on the other hand, avers that the foreman was very aggressive, shook a hand radio in his face and eventually contacted his body with the radio. Mr. Brooks took the radio away from the foreman and placed it on the desk. It was retrieved by the foreman. The testimony of two witnesses to the altercation tend to support claimant's position that the Electrical Foreman did display an unusual amount of aggressiveness. The General Foreman was then called to the scene. All parties proceeded to the office of the Assistant Shop Superintendent. The record indicates that claimant did make certain derogatory remarks about the foreman during the walk to the Superintendent's office. Following more reserved discussions before the Superintendent, Mr. Brooks was relieved from duty pending the investigation.

While it is apparent, as claimed by the organization, that there was more heat than light in the discussions, that does not excuse claimant from showing a modicum of respect for supervisory authority. It is clear from the entire record that some degree of insubordination was demonstrated by the claimant. In view of all the circumstances we are not persuaded that the ultimate industrial penalty is appropriate. Claimant has suffered serious financial loss and it is hoped that the penalty will be remedial. We return claimant to the service of the carrier without pay for the time lost.

A W A R D

Claimant will be returned to service without pay for time lost but with seniority and all other rights unimpaired.

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 April, 1980.