

The Second Division consisted of the regular members and in addition Referee David H. Brown when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company unjustly suspended Carman Helper R. F. James from the service of S.C.L. RR on July 5, 1977 and did on August 30, 1977 unjustly dismiss Mr. James from the service of the S.C.L. RR.
2. That accordingly, the Seaboard Coast Line Railroad Company be ordered to restore Carman Helper R. F. James to service with seniority and all other rights unimpaired and paid for all time lost - eight (8) hours each day, forty (40) hours each week, all overtime he would have made if he had been allowed to remain in service, health and welfare benefits, vacation rights, dental plan, and all other benefits that would accrue to his position, beginning July 5, 1977 until he is restored to 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.

On July 6, 1977, Claimant was summoned to formal investigation by the following notice:

"You are hereby notified to attend a formal investigation to be held in the office of the shop superintendent in Jacksonville, Florida on July 15, 1977 at 9:30 A.M. to determine the facts regarding your being suspended from service at 11:55 p.m., July 5, 1977 by your supervisor, Mr. Melvin L. Beasley. You were suspended from service for conduct unbecoming an employee, for being on company property with a loaded pistol and unsatisfactory service. You are directed to attend this investigation.

"Your personal record file will be reviewed in this investigation.

You may be represented in this investigation by a duly authorized representative of System Federation No. 42 and may bring any witnesses who have knowledge of this matter being investigated."

The investigation was held as scheduled, and under date of August 30, 1977, Mr. James was advised as follows:

"Facts developed in the investigation conducted by Shop Superintendent, E. P. Bledsoe, Thursday, July 28, 1977, proved that you did conduct yourself in a manner unbecoming an employee in that you did come on company property with a loaded pistol and created a disturbance. Your personal record file was reviewed in this investigation. Your present offense and previous record has been carefully weighed, and this is to advise that effective August 30, 1977 you are dismissed from the service of the Seaboard Coast Line Railroad Company.

Please arrange to turn in to the Shop Superintendent any and all company property in your possession including your Amtrak pass."

We first address the Organization's contention that the assessed discipline should be set aside because the notice of investigation failed to meet the requirements of Rule 32 that the notice of investigation apprise the involved employee "of the precise charge against him".

It will be noted that Claimant was not disciplined for "unsatisfactory service". Therefore, the Organization's complaint as to the vagueness of such charge, while well-taken, is moot. The charge, "conduct unbecoming an employee", is of itself imprecise; however, when such language is coupled with "being on company property with a loaded pistol", the combined wording adequately describes the charge being brought.

The Organization's second assignment of error concerns the adequacy of the proof of culpability. We quote from the testimony of Claimant's foreman, M. L. Beasley:

"On the day of July 5, 1977, at 3:30 when we reported to work Mr. James had not showed up for work and I did not hear from Mr. James until approximately 11 or 11:05 that night. He called me and started to explain to me why he hadn't showed up for work, and when he got through, he asked me if I could write him in so that he could qualify for his holiday that he had worked the previous day before which was on a Friday. I told him, I said 'Robert, I cannot do this, this is not our company policy, you are not on the job and I cannot write you in.' He said 'well, I appreciate it, thank you' and hung up. I went on about my business and at approximately 11:20 to 11:30 Mr.

"James showed up on the property. He approached me at the crossing between track 11 and 12. I asked him, I said 'Robert, what are you fixing to do' and he said 'I am going to work'. I said 'Robert, you have been drinking haven't you'. He said 'well, what of it'. I said, 'Robert, you are in no condition to go to work, I can't let you go to work'.

* * *

He began to get irrational and before I realized what happened he reached in his pocket and pulled out a pistol and he stuck it in my stomach and said he was fed up with me and I'm fed up with the railroad and I'm going to shoot you right here. I started begging him, I said, 'James, don't do it, don't shoot me' and I started backing up and he kept coming forward at me and the first opportunity I had I grabbed the gun and swung him around and got the gun in front of me and started hollering for help and that's when Mr. Gladden, Mr. Kilgore and Mr. Wright run out there and helped me take the gun away from him."

Such testimony sufficiently established Claimant's culpability as charged. The remaining issue is that of appropriateness of the assessed discipline. Carrier justifies termination of Mr. James on the basis of his record. However, we find that the ends of justice will best be served if Claimant is restored to duty without loss of seniority but without compensation for time lost.

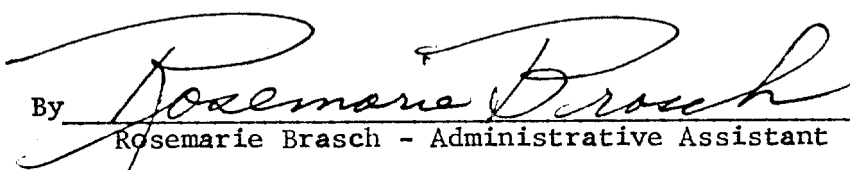
A W A R D

Claim sustained in accordance with the above Findings.

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 14th day of January, 1981.