

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

Parties to Dispute: { International Brotherhood of Firemen & Oilers
{
{ Southern Railway Company

Dispute: Claim of Employees:

1. That under the Current and Controlling Agreement, Laborer J. E. Avery was unjustly removed from the service of the Southern Railway System, Pegram Shops, Atlanta, Georgia, on August 25, 1978, without a preliminary hearing or a formal investigation as required under Rule 34 of the Current and Controlling Agreement.
2. That accordingly, Laborer J. E. Avery be restored to his assignment at Pegram Shops with all his seniority rights restored unimpaired, vacation, health and welfare, hospital and life insurance and dental insurance be paid and compensated for all lost time, effective August 25, 1978, for each and every day Mr. Avery is not permitted to protect his assignment at the pro-rata rate of pay when Mr. Avery was removed from service by Mr. B. W. Thompson, Manager, Atlanta Diesel Shop and the payment of 6% interest rate added thereto.

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.

In this dispute, Claimant is charged with insubordination and threatening bodily harm to a supervisory official. Specifically, Carrier contends that on August 24, 1978, Claimant refused to carry out the Shop Manager's instructions to pick up and dispose of debris that was lying on the floor of the Atlanta Diesel Shop and when directed again to perform this work, he threatened to assault the supervisor.

A preliminary investigation was held that same day in accordance with the explicit procedures of Agreement Rule 34 and Claimant was dismissed from service. This disposition was appealed.

In reviewing this case, this Board concurs with Carrier's basic findings of fact and disciplinary determination. Careful review of the record, which includes several corroborative eye witness accounts, unequivocally demonstrates that Claimant's precipitate misconduct was plainly antithetical to the expected code of conduct obligatory upon all employees. He was responsible for obeying the Shop Manager's directives and was insubordinate when he did not comply with these instructions. He compounded his problem when he threatened this official. The supervisor was not provocative or abusive when he directed Claimant to clean up the debris but merely issued a routine order that was not beyond the scope of Claimant's job duties or unreasonable. There were no mitigative circumstances such as safety considerations that would warrant noncompliance and his willful failure to conform to this expected employment requirement was at his own peril. It ill serves the railroad industry which is vested with a vital public interest responsibility if employees are permitted the right to self help. A disciplined and responsive chain of command is a necessary precondition of safe and efficient rail operations. It would be an anarchaic state of affairs otherwise.

In Second Division Award 5360, this Board held in pertinent part:

"The undisputed evidence shows that Claimant openly refused to commence a task when instructed to do so by his immediate supervisor and used abusive and vulgar language when confronted with this failure by his supervisor. Insubordination is a serious offense which has been held to justify dismissal under circumstances more favorable to the employee than those of this case."

This holding is on point with the essential facts herein. We will deny the claim.

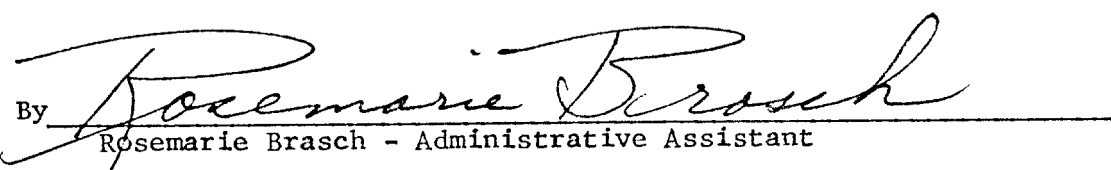
A W A R D

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 14th day of January, 1981.