

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician W. K. Jackson was unjustly treated when he was dismissed from service on April 28, 1978, following investigation for alleged violation of Rules 801 and 802 of the General Rules and Regulations of the Southern Pacific Transportation Company. Said alleged violation occurring on March 12, 1978.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employe to service, with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6 percent interest added thereto.
 - (b) Pay employe's group medical insurance contributions, including group medical disability, dental, dependents' hospital, surgical and medical, and death benefit premiums, and railroad retirement contributions for all time that the aforesaid employe is held out of service.
 - (c) Reinstate all vacation rights to the aforesaid employe.

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.

At the time of the occurrence giving rise to the dispute herein, claimant was assigned as an electrician on the third shift at Carrier's Oakland Diesel Shop, Oakland, California.

On March 16, 1978, claimant was notified to be present at the office of Terminal Superintendent at 9:00 A.M., Thursday, March 23, 1978, for a formal hearing:

"... to develop the facts and place responsibility, if any, in connection with your allegedly being quarrelsome or otherwise vicious during your tour of duty at approximately 2:00 A.M., March 12, 1978, in the Mechanic's Shanty at West Oakland, California.

You are hereby charged with responsibility which may involve violation of Rule 801 of the Rules and Regulations of the Transportation Department, Southern Pacific Transportation Company, that part reading:

'Employees will not be retained in the service who are ... quarrelsome or otherwise vicious...'

'Any act of hostility, misconduct ... is sufficient cause for dismissal...'

And Rule 802, that part reading:

'Courteous deportment is required of all employees in their dealings with...each other. Boisterous, profane or vulgar language is forbidden...'

You are entitled to representation and witnesses in accordance with your agreement provisions. Any request for postponement must be submitted in writing including the reason therefor, to the undersigned."

By agreement of the parties, the investigation or hearing was postponed and rescheduled for 1:30 P.M., March 30, 1978. It began on that date and continued on April 3, 1978. On April 28, 1978, claimant was dismissed from Carrier's service. A copy of the transcript of the formal hearing has been made a part of the record.

The Organization has included with its submission various materials that have no bearing on the dispute before the Board. The Board is concerned with what occurred during claimant's tour of duty at approximately 2:00 A.M., March 12, 1978.

The Organization contends that claimant did not receive a fair and impartial hearing because certain witnesses that he requested were not present. The conducting officer declined to call the witnesses requested by the claimant as they were not present at the time of the occurrence involved in the charge. We consider the actions of the conducting officer proper as the purpose of an investigation or hearing is to develop the facts in connection with the occurrence that resulted in the charge.

In the formal hearing substantial evidence was adduced in support of the charge against the claimant. Other employees testified that claimant did make physical threats against the life of a foreman who was not present; that claimant's demeanor at the time was belligerent; that claimant used vulgar and vicious language, and expressed his feelings in a rough and crude manner.

While we fully realize that tea-room language does not prevail in a railroad shop, the actions of the claimant as described by other employes who were present at the time, were such that cannot be condoned. There is no proper basis for this Board to interfere with the discipline imposed.

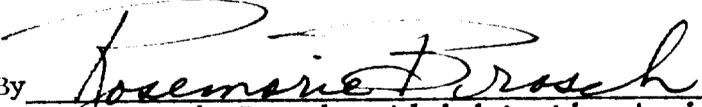
A W A R D

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 September, 1981.