

The Second Division consisted of the regular members and in addition Referee Francis X. Quinn when award was rendered.

Parties to Dispute: { International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

That under the current controlling Agreement, Boilermaker N. G. Ferguson was unjustly dealt with when the Southern Pacific Transportation Company suspended him from service on September 13, 1978 pending formal hearing, and, suspended him from service on October 19, 1978 for a total of forty-five (45) days. That accordingly, Southern Pacific Transportation Company make Boilermaker N. G. Ferguson whole by compensating him for said forty-five (45) days.

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.

Mr. N. G. Ferguson (hereinafter referred to as the Claimant) entered Carrier's service on July 3, 1970.

On September 13, 1978, Claimant was working as a Boilermaker in the Erecting Shop of Carrier's Sacramento, California, Heavy Maintenance Yard, hours of service 7:00 AM to 3:00 PM.

At approximately 10:00 AM, Claimant was involved in an altercation with another employe, also a boilermaker, which resulted in their being careless of the safety of themselves and others and being quarrelsome or otherwise vicious. The incident was witnessed by a supervisor and an employe. After informing the officer in charge, Claimant and other boilermakers involved were removed from service pending formal hearing. At the request of the Organization, the hearing was postponed until October 10, 1978, on which date it was convened.

As a result of the evidence adduced at the formal hearing, it was established that a degree of responsibility laid with the Claimant, and for his actions, Claimant was suspended from service of the Southern Pacific Transportation Company for forty-five (45) days commencing September 13, 1978.

There is substantial evidence within the hearing record that Claimant was in violation of that portion of Rule 801 of the General Rules and Regulations reading:

"Employees will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism."

Discipline was mitigated in view of the Claimant being physically attacked and acting in self-defense; however, Claimant was not blameless in the dispute as it was the Claimant's remarks that provoked the other boilermaker to action.

Based on the record before us we find the claim to be without merit.

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 27th day of January, 1982.