

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen and Oilers
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That under the current and controlling agreement, Laborer Norman Butler, Jr., was unjustly dismissed from service of the Seaboard Coast Line Railroad Company on February 8, 1979, after a formal investigation was held in the office of Mr. E. P. Bledsoe, Shop Superintendent.
2. That accordingly Norman Butler, Jr., Laborer, be restored to his regular assignment at West Jacksonville Shops with all seniority rights unimpaired, vacation, health and welfare, hospital and life insurance be paid and be compensated for all lost time at the pro-rata rate of pay, effective February 8, 1979, and continuing thereto until this case is adjudicated.

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 Norman Butler, Jr. is a Laborer employed by Carrier at Jacksonville, Florida. He did not report for work on August 22, 1978. He was involved in a shooting at a tavern in Jacksonville. He was booked, jailed, and subsequently released on bail.

Claimant attempted to return to work on September 5, 1978, but was held out of service pending a hearing into the matter. That hearing was held on September 13, 1978. He was charged with conduct unbecoming an employe and unsatisfactory service. The hearing was begun on September 13, 1978 and was partially completed. It was recessed until January 5, 1978, to await the outcome of Claimant's civil case in county court. During that case, he pleaded guilty to aggravated assault and was placed on ten years' probation.

The hearing was reconvened on January 5, 1979, and concluded at that time. Claimant was found guilty as charged and dismissed from Carrier's service. Carrier states that it took this action because Claimant was found guilty of aggravated assault with a gun and because of his past work record.

The Organization alleges that Claimant was not on the property when the act for which he was arrested took place. Therefore, Carrier had no jurisdiction over him and he should not be disciplined. It also argues that Claimant acted in a reasonable manner. He was attacked first and only responded in kind.

The facts of the case are not in dispute. Claimant became involved in a fight with a man named Flood. The record reveals that Flood was the instigator and that he came at Claimant with a knife. It also reveals that Claimant fled from the fight, went across the street to his home, got his gun (a 38-caliber revolver), came back, and shot Flood in the abdomen. Claimant received ten years' probation as a result of pleading guilty to a charge of aggravated assault.

The issue here is does Carrier have the right to dismiss Claimant for a criminal act committed off its property and on Claimant's own time. This Board has been faced with numerous cases involving the same issue involving a variety of crimes. We have come down on both sides of the issue, depending on the severity of the crime, the impact on Carrier's good name, and the possible impact on other employes of Claimant's presence on the property.

In the instant case, we think that Claimant's continued presence on Carrier property would pose a threat to his fellow employes and that Carrier would be faced with possible liability if Claimant displayed the same lack of control on the property as he did during the shooting incident.

By his own admission, Claimant stated that he was mad and that he did not like what Flood had done and said to him. That is why he shot him. Claimant did not shoot in self defense. He did not accidentally shoot Flood. He went across the street, got his gun, came back, and shot him because he was angry.

If Claimant is capable of such behavior (and there is nothing in the record to indicate that he was not in control of all his faculties), Carrier is within its right to remove such an employe from its property. The only way that this Claimant could be put back to work would be on a leniency basis. If leniency is to be granted, it must be done so by Carrier on the property. Carrier obviously considered the incident and Claimant's past record (which, by any standard, was poor) and decided against restoring him to service. Given all the facts in this record, the Board cannot conclude that Carrier's actions were so arbitrary, unreasonable, and capricious as to warrant substituting our judgment for that of Carrier.

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Award No. 9120
Docket No. 8621
2-SCL-FO-'82

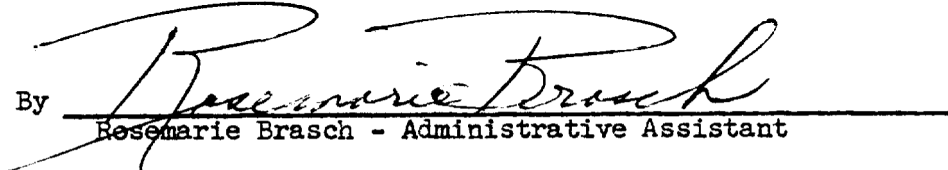
A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of June, 1982.