

The Second Division consisted of the regular members and in addition Referee James F. Scearce when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
National Railroad Passenger Corporation

Dispute: Claim of Employes:

1. That under the current Agreement Electrician Robert L. Iannello was unjustly treated when he was withheld from service commencing June 27, 1980 and subsequently dismissed from service on August 11, 1980 following an investigation for alleged violation of Rules of Conduct E, F, I and J of the National Railroad Passenger Corporation (Amtrak).
2. That accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to restore Electrician Robert L. Iannello to service with all rights unimpaired, compensation for all lost wages, all vacation benefits, railroad retirement benefits and all other benefits, rights and privileges due Mr. Iannello under prevailing schedule of rules, agreements or law. Claim to begin June 27, 1980.

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.

The events in this case occurred in the afternoon of June 27, 1980 at the Carrier's Penn Coach Yards in Philadelphia. On that date at about 2:20 p.m. the Claimant and another electrician (Bryant) engaged in an altercation. The events surrounding such fight are much in dispute. According to Bryant, the Claimant had removed a spray can from his locker and was threatening to write something derogatory about Puerto Ricans on a locker. Bryant purports to have warned him that if he did so on his (Bryant's) locker, he would push the Claimant through it. The Claimant then purportedly went to his own locker and withdrew a sawed-off shotgun, to which Bryant contends he responded by pushing the Claimant against the wall, in the process disengaging the Claimant's glasses and breaking his neck chain. The struggle ended on the floor with the Claimant on his back and the other electrician atop him. This was the condition when a foreman came on the scene and disengaged them. Per the foreman, the Claimant then went to his locker and removed and carried out of the room "... what was supposed to be a shotgun." The Claimant was also alleged to have spoken to an observer (Reil) at that time

concerning his need to remove such item; the record of the transcript shows that Reil was not called to testify.

The Claimant was charged with violations of Rules of Conduct dealing with possession of firearms on duty (Rule E), non-compliance with safety regulations (Rule F), being quarrelsome and vicious (Rule I) and Rule J which prohibits fighting, threats and violence. As a result of a hearing, the violations of the aforesaid Rules were affirmed and the Claimant was discharged August 11, 1980.

We are essentially asked to review proceedings and particularly the testimony of the Claimant, the other combatant and the foreman who came on the scene to assess the propriety of the discipline in this case. We note the disparity as to where the alleged firearm was during the fracas: per Bryant, the Claimant had removed it from his locker; such action caused the contest between the two with their eventually ending on the floor. Per the foreman (McFadden) he separated the two employes, whereupon the Claimant went to his locker and extracted what appeared to be a shotgun. The judgment of the hearing officer as to who precipitated the fight had to rest on testimony of the two combatants and both obviously had much at stake in that regard. We find nothing in the record that lends more credibility to Bryant than the Claimant in that regard. We note, however, that neither the Claimant nor the Organization took exception to the conduct of the hearing or the witnesses adduced for testimony.

The aspect of the charges levied against the Claimant which represents the gravamen of this case involves the presence of a shotgun in what was alleged to be the Claimant's locker. The presence of a firearm on Carrier property in and of itself is sufficient violation of Rules to warrant discharge. Notwithstanding the differences in testimony as to its location, we are compelled to ascribe credibility to the charge and conclude that the Claimant's termination was justified.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of April, 1983.