

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(The Belt Railway Company of Chicago

Dispute: Claim of Employees:

1. That under the Controlling Agreement the Belt Railway Company of Chicago unjustly dismissed Machinist Helper Michael T. Olsen from service effective December 1, 1979.
2. That accordingly the Belt Railway Company of Chicago be ordered to compensate Claimant's widow up to the date of Claimant's death which was September 8, 1980, and pay in lieu of vacation and for other benefits (insurance) which would have been applicable had this unjust dismissal not occurred.

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 employes 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, Michael T. Olsen, (*) was employed as a machinist's helper when he received notice dated December 2, 1979 to appear for a formal hearing. He was charged with allegedly assaulting and injuring a fellow employe on that same date at about 4:20 A.M. in the fuel shanty at Carrier's Clearing Locomotive Service Track while he was working overtime on regular assignment. After the investigative hearing was held on December 6, 1979 Claimant received notice that his services with the Carrier were terminated, effective December 7, 1979 for violation of Rule J of the Carrier Book of Rules. Rule J reads as follows:

RULE J

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious. They must conduct themselves in a manner that will not bring discredit on their fellow employees or subject the railroad to criticism and loss of goodwill.

(*) Claimant's name is spelled variously Michael T. Olsen and Michael T. Olson in the record before the Board.

Playing practical jokes, scuffling, wrestling, or fighting while on duty or on company property, as well as throwing of tools or materials is prohibited.

A review of the record shows that Claimant's rights were not abrogated by the manner in which the investigation was conducted, nor by the way the subsequent appeal process was handled.

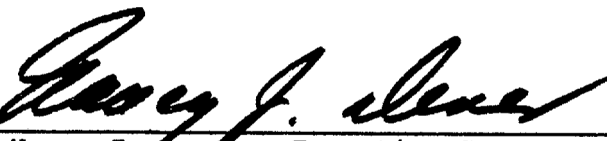
On merits the record documents overwhelming substantial evidence, including Claimant's own testimony, to warrant support for Carrier's finding that Claimant was guilty as charged. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion". Numerous prior Awards of this Board, including Third Division Awards 8481 and 22616 inter alia also set precedent for discharge in cases such as the instant one. Further, it is well established that the Board will not substitute its judgment for that of the Carrier in discipline cases when substantial evidence is present if no other extenuating circumstances exist.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1983.