

The Second Division consisted of the regular members and in addition Referee Hyman Cohen when award was rendered.

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

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer J. Green, Laborer, Minneapolis, Minnesota, was unfairly dismissed from service of the SOO Line Railroad Company effective July 29, 1981.
2. That accordingly, the Carrier be ordered to make Mr. Green whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement for all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 Claimant was hired by the Carrier as a Laborer on August 4, 1977. On July 8, 1981 at approximately 9:00 a.m., during his regular tour of duty at the Carrier's Shoreham Diesel Shop, the Claimant pushed and verbally abused R. McGrorty, a Machinist. Later that morning the Claimant approached H. Wenzel, a Laborer and proceeded to threaten and kick him in the shins, while swinging a broom. Foreman L. Wolfe intervened and the Claimant left to attend a safety meeting. After the safety meeting concluded, the Claimant approached Wenzel and hit him in the jaw, kicked him several times and verbally abused him. The Claimant then walked off the job without permission. Each of the incidents on July 8, 1981 were not provoked by McGrorty or Wenzel.

The Claimant was charged by the Carrier with violation General Safety Rule "E" and Rule 14, Paragraph 2 of the Agreement which provide as follows:

RULE E: "Civil, gentlemanly deportment is required of all employees in dealing with the public, their subordinates and each other."

RULE 14: Paragraph 2:

"Permission to be absent from work for other causes must be obtained from foreman."

Although he was duly notified by the Carrier that a hearing on the charges would take place on July 14, 1981, and was aware of the time and place where it was to be held, the Claimant did not attend the hearing. Following the hearing the Claimant was dismissed from service.

The Organization claims that the Claimant failed to appear at the investigation because he placed himself in the care of the Minneapolis Clinical Association in Psychiatry. However, the record indicates that the earliest date that the Claimant was a patient was July 28, 1981 which was subsequent to the date the investigation took place.

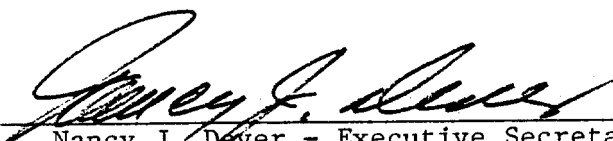
It is clear to the Board that the Claimant's conduct on July 8, 1981 violated General Safety Rule "E" and Rule 14, Paragraph 2 of the Agreement. The Carrier cannot and should not tolerate the unprovoked and deliberate physical violence committed by the Claimant against his fellow employees. As a result, the Board concludes that the penalty imposed against the Claimant should not be disturbed.

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 17th day of October 1984.