

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

Parties to Dispute: (International Brotherhood of Firemen and Oilers
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(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, K. D. Garvin, I. D. No. 261830, was unjustly dismissed from service of the Louisville and Nashville Railroad Company on July 20, 1981, after a formal investigation was held on July 6, 1981.
2. That accordingly Service Attendant K. D. Garvin be restored to his regular assignment at L & N Railroad South Louisville Shops, Louisville, Kentucky, compensated for all lost time, vacation, health and welfare, hospital and life insurance and dental insurance premiums be paid effective July 20, 1981, and the payment of 6% interest rate be added thereto.

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 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 claim protests the dismissal of the Claimant for conduct unbecoming an employe and leaving Company property without permission.

The Claimant, a Service Attendant, requested permission to leave work on May 28, 1981 because of illness. He did not explain the nature of his illness and he refused to see the Company nurse or to be taken to the hospital. When his request was denied by two Supervisors, he shouted at them about taking food out of his children's mouths. According to his Supervisors, the Claimant threatened one of them with bodily violence while making that statement. The Claimant testified that he left because he was ill with a subsequently discovered kidney infection, and he denies that he ever threatened physical violence even though provoked when one of the Supervisors used a racial epithet against him.

Upon careful review of the entire record, the Board finds the charges to be supported by credible substantial evidence. By refusing competent medical attention and failing to disclose the nature of his illness, the Claimant failed to justify leaving without permission. We also find credible the testimony of the physical threats by the Claimant against his Supervisor. That conduct is in itself a dischargeable offense; and no mitigating factors are present here. It is clear from the words of the Claimant's threat that he was reacting to the possibility of discharge and not to any perceived racial epithet.

As to the penalty imposed, the Board finds dismissal warranted particularly in light of the Claimant's past record for the 13 months of his actual employment. This incident occurred only two months after his reinstatement on a leniency basis following a discharge of five months. The claim must therefore be denied.

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 9th day of January 1985.