

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

(International Association of Machinists and
(Aerospace Workers, AFL-CIO
Parties to Dispute: (
(Atchison Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

That the Carrier improperly suspended Machinist L. P. Wing (hereinafter Claimant) from service on February 7, 1982 and subsequently dismissed him on March 10, 1982.

That Claimant be restored to service with seniority, vacation, and all other benefits restored unimpaired.

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 entered the service of the Carrier on April 3, 1978. After a formal investigation was held on February 24, 1982, the Claimant was discharged for being quarrelsome and physically assaulting General Foreman T. D. Enns and Diesel Foreman R. H. Lemken.

On February 7, 1982, General Foreman Enns was involved in a discussion with the Claimant concerning his failure to perform a job assignment that was given to him by Foreman Lemken on February 6, 1982. General Foreman Enns also referred to the Claimant leaving early without proper authority on February 6, 1982. He then stated that based on the information that had been reported to him he would be recommending that discipline be issued to which the Grievant replied, "I don't give a s---t". Foreman Lemken then joined the discussion by stating that the Claimant was not truthful in his answers to General Foreman Enns' questions regarding the previous night. At this point, the Claimant became agitated and argumentative and struck Foreman Lemken in the chest. General Foreman Enns then informed the Claimant that he was being removed from service pending an investigation. The Claimant hit Foreman Lemken again and also struck General Foreman Enns. When Foreman Enns got on the "pakset" and called the office for assistance, the Claimant left the Carrier's property.

The Claimant acknowledged that he "shoved***Mr. Lemken, as I went toward my locker". Deciding that he didn't need anything "he turned around and they were both standing blocking my exit out of the door, so I turned around and shoved them and went out the door." Rule 16 in relevant part provides:

"Employees must not be***quarrelsome or vicious."

The Board is persuaded that by his conduct on February 7, 1982, the Claimant was "***quarrelsome and vicious" within the meaning and intent of Rule 16. The parties have provided for a procedure to dispose of disagreements between an employee and his supervisor. The procedure contained in the Agreement is for the employee to file a grievance. At the culmination of the process, the truthfulness of the witnesses' can be adequately tested under more suitable conditions than the circumstances that were present on February 7, 1982.


In his relatively brief service with the Carrier, the Claimant was assessed thirty (30) demerits in May, 1980 for insubordination. Accordingly, in light of the serious violation of Rule 16 by the Claimant, the Board concludes that the dismissal of the Claimant from service was not arbitrary, or unreasonable.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 27th day of March 1985.