

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Southern Pacific Transportation Company (Western Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician Helper P. J. Lathrop was unjustly treated when he was dismissed from service on March 15, 1982, following investigation for alleged violation of portions of Rule 801 and Rule 802 of the General Rules and Regulations of the Southern Pacific Transportation Company (Western Lines). Said alleged violation occurring on February 26, 1982, at approximately 7:20 a.m.
2. That accordingly, the Southern Pacific Transportation Company (Western Lines) be ordered to restore Electrician Helper P. J. Lathrop to service with all rights unimpaired including service and seniority, loss of wages, vacation, payment of hospital and medical insurance, group disability insurance, railroad retirement contributions, and loss of wages, including interest at the rate of six percent (6%) per annum.

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.

Following proper notice and investigation hearing on March 4, 1982, Electrician Helper P. J. Lathrop was discharged from the Carrier's service. Claimant was found guilty of the charge set forth in the notice of hearing, of which the pertinent part states the following:

"...your alleged action of being quarrelsome, or otherwise vicious, in conducting yourself in a manner which would subject the Railroad to criticism, and for your alleged act of hostility, misconduct, affecting the interests of the Company, which is sufficient cause for dismissal, on February 26, 1982, at approximately 7:20 a.m., when you allegedly threatened bodily harm to Supervisor W. J. Costa and for your alleged unauthorized action of accosting Supervisor W. J. Costa, for which occurrence you are hereby charged with responsibility which may involve violation of those portions of Rules 801 and 802 of the General Rules and Regulations...."

The evidence consists of testimony by Claimant's Supervisor that he had approached Claimant and another employee, and asked both of them to change their jogging type tennis shoes for proper work boots. He also informed them that they must go home for the boots if they were not with the employees on the property. The Supervisor testified he approached the same employees 15 minutes later, and again warned them they could not work with the shoes they were wearing. According to the Supervisor, the Claimant followed him a short distance, at which point Claimant grabbed his hair. The Claimant then threatened the Supervisor that if disciplinary action were taken, Claimant would come to the Supervisor's house and make him "pay for it". The Claimant proceeded to jerk the Supervisor's head by pulling on his hair and again threatened to "get" him. The General Foreman did testify that he was informed of the details of the incident by the assaulted Supervisor shortly after the occurrence. Claimant flatly denies the charges, and asserts that if something had occurred between himself and the Supervisor, that approximately 29 employees in the vicinity at the time would have seen the incident and testified to that fact.

The only way that this Board could sustain the instant claim would be to make a credibility determination by rejecting the Hearing Officer's acceptance of the Supervisor's version and accepting that of the Claimant. As we stated in Second Division Award 10376, the question of the credibility of witnesses and the weight to be given their testimony is primarily one for determination by the Hearing Officer, but this general rule should not be mechanically applied. The issue of the credibility of a witness' testimony is not subject to reevaluation by this Board in the instant case. While it is a fundamental principle that the Carrier has the burden of proof in discipline cases, the Hearing Officer should consider the charged party's interest in the facts and outcome of the case, in particular where the two witnesses to the incident directly contradict each other, and the veracity of neither was impeached.

Claimant's reliance on the fact that although a large number of employees were in the vicinity of the altercation, but none testified, adds nothing to the credibility and weight of his testimony. There was no testimony on Claimant's behalf by any witness that was so placed that if the event in question had occurred, he would probably have noticed it so as to controvert the testimony by the Carrier's witness. Further, this Board upon review of the entire record cannot say that Claimant's testimony was not weighed as carefully as any other witness that appeared at the investigation.

The Carrier established by substantial, credible evidence the serious charges against Claimant. The Board finds that under the facts and circumstances of this case, the penalty was neither arbitrary, unreasonable nor capricious.

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 April 1985.