

The Second Division consisted of the regular members and in addition Referee James R. Cox when award was rendered.

Parties to Dispute: ( Sheet Metal Workers International Association  
(  
( Soo Line Railroad Company

Dispute: Claim of Employees:

1. The Carrier violated the provisions of the current controlling agreement when they placed Sheet Metal Worker L. P. Burris, Sr. on indefinite suspension from service on July 19, 1982 as a result of an investigation which was held on June 30, 1982.
2. That accordingly, the Carrier be required to restore Mr. Burris to service with all seniority rights unimpaired; compensate Mr. Burris for all time lost in addition to an amount of 6% per annum compounded annually on the anniversary date of claim; make Mr. Burris whole for all vacation rights; reimburse Mr. Burris and/or his dependents for medical and dental expenses incurred while he was improperly held out of service; pay to Mr. Burris' estate whatever benefits he has accrued with regards to group life insurance for all time he was improperly held out of service; pay Mr. Burris for all contractual holidays; pay Mr. Burris for all jury duty pay and for all other contractual benefits.

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.

Sheet Metal Worker L. P. Burris, Sr. had almost 40 years service with the Soo Line Railroad Company when, the morning of June 18, 1982, he admittedly told his foreman, Mr. Johnson, to shove an order to report to the Roundhouse up his "ass", and said that he was going home sick.

Another Foreman, Kocur, approached Burris and asked if he was going to the Roundhouse. Burris replied that he was going home sick and prevented the Foreman from moving away by stepping in front and bumping against him repeatedly with his stomach. Kocur told Burris that he would give him a second chance to obey his Foreman's order. Claimant initially said that he did not have to

follow that order since he was not the youngest man, then said that he was sick and going home. Kocur also testified that Burris suggested, "Let's you and I go outside the company gate and settle this thing, he said this twice." He stated that Burris then pushed him hard enough to knock him off balance.

According to Burris, when the Foreman initially gave him the order to go to the Roundhouse, he laughed figuring that he was kidding since he had not previously received such an assignment. The second time the Foreman gave the order, according to Burris, he swore -- "Get your ass over to the Roundhouse, now that's the order now." Burris responded that he was a senior man and should not have had to go to the Roundhouse. There is, however, no evidence of any rule dealing with the exercise of seniority in job selection within the craft. Burris claimed that his "shove it" comment was provoked by language that the Foreman has used toward him and also that it had been the practice to assign the junior employee to the Roundhouse. He admitted telling the Foreman that he was going home sick, contending at the investigation that he had sciatic nerve problems and that the incident had aggravated this condition. He punched out at 8:00.

Claimant persisted in his refusal to work in the Roundhouse as assigned June 18th despite being given a second chance to follow the order. The evidence shows that this subsequent refusal was not because he was sick, but because he believed that a junior man should do the job. His claim of sickness was not supported by any evidence or appearance of disability and the contention was not made until after he received the unwelcomed Roundhouse assignment. Claimant's insubordination was aggravated by his conduct toward Foreman Kocur -- bumping, pushing and challenging him to a fight in the presence of other personnel. Such actions constitute sufficient evidence to support the finding of a violation and the degree of discipline imposed.

Even if Burris could have been considered off duty and was going home sick when he encountered Kocur as he left the premises, his insubordinate pushing and bumping of the Foreman would justify discipline.

Burris was placed on an indefinite suspension for violation of General Safety Rule E, insubordination to both Foremen and the subsequent altercation. General Safety Rule E reads:

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

October 11, 1982, the Carrier authorized reinstatement, provided the claim was withdrawn and if Burris, among other things, agreed to comply with supervisors' instructions and, if he had a complaint, to grieve later. This offer of settlement was rejected by the Directing General Chairman November 23, 1983.

Thereafter, the Carrier proposed to return Burris to work without the requirement of withdrawing his claim, subject however, to other conditions including an agreement to comply promptly with supervisor's instructions. This offer was accepted March 28, 1983 and Burris returned to service after a medical examination.

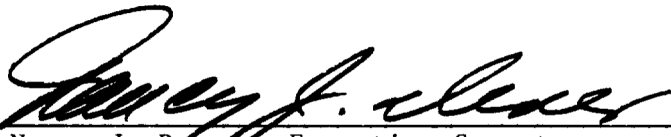
The Board has carefully examined the procedural objections made by the Organization. The Manager of Shops issued the notice but the evidence indicates that he authorized the conducting officer to sign his name to a subsequent, substantially similar notice rescheduling the hearing. These circumstances do not make the conducting officer the officer preferring the charges. Furthermore, the failure to use the term "alleged" when describing Claimant's conduct in the notice does not establish that the issuing officer had predetermined Claimant's guilt. Second Division Awards 7939; 10381. The Organization has not shown that Rule 32 required that witnesses be sequestered. Second Division Awards 9285; 8356.

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 22nd day of May, 1985.