

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(International Association of Machinists
(and Aerospace Workers
Parties to Dispute: (
(Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That, the Carrier improperly dismissed Machinist F. P. Medina (hereinafter referred to as Claimant) from service on December 27, 1984.

2. That on June 14, 1985 the Carrier reinstated Claimant to service without prejudice until such time as this issue has been resolved by an appropriate Adjustment Board.

3. That, accordingly, the Carrier be ordered to compensate Claimant for all wage and benefit loss from date out of service (December 9, 1984) to date of restoration to service, June 14, 1985.

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.

The Claimant herein was employed by the Carrier as a Machinist at its Diesel Shop at Stockton, California. He had been in Carrier's service about ten years. On December 10, 1984, Claimant was notified to attend Investigation scheduled for December 11, 1984, on the charge:

"Please report to the Diesel Shop Conference Room, Stockton, California at 1:00 P.M. on Tuesday, December 11, 1984, for investigation and hearing on charges of conduct unbecoming an employe when at

approximately 5:45 A.M., Sunday, December 9, 1984, you used profane language directed at fellow employees in the cab of unit 3103. Also, you are being charged with being insubordinate in that you failed to comply with instructions issued to you by Terminal Trainmaster D. Kroese to cease using profane language; however, you continued to use profane language and became involved in verbal altercation with Trainmaster Kroese. This is in violation of General Rule B, and General Regulations 700, 701, 701(A), and 702(B) of Form 7908.

Investigation and hearing will be held in conformity with Rule 36 of the agreement between the Western Pacific Railroad Company and the IAM&AW, and you are entitled to representation as set forth in that rule.

You may produce such witnesses as you desire at your own expense.

You are being withheld from service pending result of this investigation."

The Rules cited in the December 10, 1984, letter were read into the Transcript of the Investigation, and are set out in the Carrier's Submission to this Board. We see no necessity of repeating them here.

The Investigation was conducted as scheduled. A copy of the Transcript of the Investigation has been made a part of the record. Claimant was present throughout the Investigation and was represented. Claimant admitted that he was familiar with the Rules referred to.

The Organization has complained that Claimant did not receive a fair and impartial Hearing because the same Officer who issued the Notice of Investigation also conducted the Hearing. Such dual roles by the same Officer did not violate the Agreement, nor render the Investigation partial. The Officer who conducted the Investigation did not testify.

The Organization has also complained that the witnesses in the Investigation were not sequestered. We have been referred to no Rule requiring the sequestering of witnesses, and in the absence of such Rule the Board has held that the sequestering of witnesses is at the discretion of the Hearing Officer. See Award 4007 (Second Division) and Award No. 16007 (Third Division). We find that the Investigation was conducted in a fair and impartial manner.

Following the Investigation, Claimant was notified of his dismissal from service on December 27, 1984. By Agreement Claimant was restored to service on June 14, 1985. The Claim before the Board is that Carrier be ordered

to compensate Claimant for all wage and benefit loss from date out of service, December 9, 1984, to June 14, 1985, a period slightly in excess of six months.

From our review of the Transcript of the Investigation, we find that substantial evidence was adduced that Claimant, on the date involved, did use profane and vulgar language addressed to an official of the Carrier (Terminal Trainmaster) in the presence of other employes. He continued to do so after being cautioned by the official as to the language that he was using. Severe discipline was warranted as such conduct on the part of employes simply cannot be condoned. We do not consider the time that Claimant was out of service as constituting excessive discipline. As stated in Third Division Award No. 24732:

"Insubordination may involve more than a direct refusal to comply with instruction. It may involve the use of foul and abusive language, threats, altercations and similar offenses."


See also Award No. 3984 of the Fourth Division.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 7th day of January 1987.