

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(International Association of Machinists and Aerospace
(Workers

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (Seaboard System Railroad)

STATEMENT OF CLAIM:

1. That the Seaboard System Railroad violated Rule 30, but not limited thereto, of the current Agreement when it unjustly dismissed Machinist T. E. Harvin following an investigation held December 27, 1985.

2. That, accordingly, the Seaboard System Railroad be ordered to reinstate Mr. Harvin with seniority rights unimpaired, compensate him for all pay and benefits lost (made whole) as a result of said dismissal and remove all reference to the charges from his record.

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 is employed by the Carrier as a Machinist at Carrier's Hialeah Enginehouse, Hialeah, Florida. While on duty on December 18, 1985, at 9:50 A.M., the Claimant engaged in an exchange of words with a Sheet Metal Worker. Following the exchange, the Claimant allegedly advanced on the Sheet Metal Worker, wielding a crowbar. The Sheet Metal Worker turned a water hose on the Claimant, spraying him, and then ran toward the office area. The Claimant pursued the Sheet Metal Worker to the office, where, in the presence of the General Foreman, struck him on the right cheek with his fist, injuring him. The Sheet Metal Worker was later treated at a medical clinic, where he received pain medication for injuries sustained in the attack.

As a result of the incident, both the Claimant and the Sheet Metal Worker were listed as principals in a joint investigation held on December 27, 1985, in which they were charged by the Carrier with, "...violating that part of Rule 3 of the Rules and Regulations of the Mechanical Department which

reads: "...vicious or uncivil conduct...will subject the offender to dismissal.'" Both men were found guilty of the charges. The Sheet Metal Worker was suspended from service, and the Claimant was notified by letter of January 20, 1986, that he was dismissed from service.

In regard to the December 27, 1985 hearing, the Organization maintains that by holding a joint investigation, the Carrier violated the Claimant's rights under Rule 30. They also point out that the Carrier made no attempt to secure a written statement from an important witness who could not attend the hearing since he was on vacation. They also feel that the penalty of dismissal in what they view as a provoked attack was too severe. However, the Carrier insists that there are no prohibitions to conducting joint investigations, and that the Claimant was given reasonable advance notice of the hearing he was permitted to participate fully in all aspects of the investigation. In respect to the missing witness, the Carrier asserted that he did not witness the incident in question, and, therefore, was not crucial to the investigation. Further, the Carrier believes that the penalty of dismissal is not too severe since the Claimant had previously been charged and had been suspended for 30 days. See Second Division Award 10347.

According to the Claimant, the Sheet Metal Worker had frequently squirted water carelessly around the shop in the past, and had actually squirted the Claimant on other occasions, incidents which had been witnessed. The Claimant alleged that he had complained to his supervisor regarding the Sheet Metal Worker's behavior, but that no action had been taken. He maintained that during this most recent incident, he had pursued the Sheet Metal Worker after the man sprayed him with water, and had attempted to grab him in front of the office--a move that was interpreted by the General Foreman as an attempt to "punch" the Sheet Metal Worker. He asserted that he was only trying to counter his attack, and that his practice of "running away" after spraying people with water did not relieve him of responsibility for initiating the act of aggression.

However, it remained the Carrier's position that no degree of alleged provocation justifies the physical attack of one employee on another. According to the Sheet Metal Worker, when he saw the Claimant advancing on him with a crowbar raised over his head, he feared for his own life. The General Foreman testified that the blow struck by the Claimant in front of the office was a "punch," not an attempt to "grab" the Sheet Metal Worker. Since the prior Second Division Award 10347 had placed the Claimant on notice regarding his uncivil behavior, he clearly understood the unacceptability of attempting to attack employees of the Carrier.


Although two employees were charged in the incident under examination, it is not mandatory that they receive the same discipline (Third Division Award 25905). Further, there is no prohibition against conducting joint investigations, as long as each employee's rights are protected (Third Division Award 18009). Due to the severity of this Claimant's behavior and the Carrier's prior admonition against recurrences of such behavior, the Board finds the Claimant guilty as charged. The claim is 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 22nd day of March 1989.