

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12845
Docket No. 12733
95-2-93-2-87

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinist and
(Aerospace Workers, AFL - CIO
PARTIES TO DISPUTE: (
(Atchison, Topeka, and Santa Fe Railway Company

STATEMENT OF CLAIM:

- "1. That the Atchison, Topeka, and Santa Fe Railway Company (hereinafter referred to as the "Carrier") violated the controlling Agreement, specifically Rule 40, when it wrongfully dismissed Machinist R. E. Cline (hereinafter referred to as the Claimant) from service at Kansas City, Kansas, subsequent to an investigation on August 27, 1992.
2. That, accordingly, the Carrier reinstate the Claimant to service with his seniority rights unimpaired with the payment of all time lost and all other rights and privileges restored due to his being wrongfully dismissed from service."

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 employee 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.

On August 20, 1992 the Claimant was notified to attend a Formal Investigation considering allegations that he engaged in unbecoming conduct during an altercation with a fellow employee. The Notice specified possible violations of Rules in that the Claimant was allegedly quarrelsome, threatening and hostile. An Investigation was held on August 27, 1992. On September 9, 1992, the Claimant was notified that he had been found guilty as charged and was dismissed from service to the Carrier.

In support of the Claimant, the Organization has presented a detailed review of the events and testimony thereto. The Organization maintains that at approximately 11:45 p.m. on August 19, 1992 the Claimant was in the locker room with other employees when Electrician Woods walked by. As part of a gag, the Claimant played along with accepting responsibility for an insult leveled at Mr. Woods by a fellow employee. Shortly thereafter in the Diesel Service Facility lunchroom, the Claimant and Mr. Woods had a physical and verbal exchange. The Organization argues that the altercation was due to Mr. Woods. It further argues through testimony during the Investigation that the Claimant never violated any of the Rules for which he was charged. The thrust of the Organization's argument is that the Claimant was wrongly accused and unjustly suspended. The Organization maintains that the evidence proves that the Claimant neither insulted Electrician Woods, nor engaged in hostile, quarrelsome, threatening or unbecoming behavior. Claimant's behavior was self-defence.

The Board has fully read the Carrier's arguments and the testimony of record. There is sufficient probative evidence that the Claimant violated the Rules as charged. Testimony of Electricians Woods, Knapp, Laborer Seavers and Machinist Hamling do not present the Claimant as an uninvolved and unwitting participant. There is substantial proof that the Claimant made derogatory threats and thereafter followed Mr. Woods outside. Profanity, threatening statements, the opening of a pocket knife and the prior wrestling are well documented. In view of the record before this Board, as shown through the testimony of the participants, there is adequate proof to support the Carrier's findings of guilt with respect to Rules A, B, 1007 and 1008 of the Safety and General Rules for all employees.

Having found the Claimant guilty by substantial probative evidence, the Board lastly considers the discipline imposed by the Carrier. We are most reluctant to set that discipline aside, but are constrained herein to do so. The Board holds for the reasons enunciated in Public Law Board No. 5388, Award 7 that:

"The Claimant should be given one last opportunity to return to carrier service with his seniority rights unimpaired, but without pay for time lost."

AWARD

Claim sustained in accordance with the Findings.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 24th day of February 1995.