

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12851
Docket No. 12749
95-2-93-2-161

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

(International Association of Machinists 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 Lee Cammon (hereinafter referred to as "Claimant") from service September 9, 1992, subsequent an investigation at Chicago, Illinois 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 were given due notice of hearing thereon.

On August 27, 1992, a formal Investigation was held to develop the facts surrounding an incident which led to an on-duty injury. The Carrier alleged that the Claimant was responsible for engaging in disorderly conduct and entering into an altercation in violation of numerous Rules. Subsequently, the Claimant was found guilty and dismissed from the service of the Carrier.

The record contains substantial probative evidence to conclude that the Claimant is guilty as charged. Claimant denies initiating a confrontation, but whatever may have occurred, admits that he "was mad" and accuses the other employee of being the one that "started it when he pushed me." The testimony of the other employee is that the Claimant hit him.

The Board has carefully considered the Organization's arguments. We find them unpersuasive. To argue that the Claimant is wrongfully accused and that this was only a loud discussion ignores the mass of evidence to the contrary. The testimony and signed statement of other employees provides evidence that the Claimant was angry, pushing, exchanging loud words and the episode included profanity and talk of going outside for a fight. Testimony is that "both" were involved in what was a face to face loud argument. The evidence of record is sufficient to conclude that the Carrier's conclusion of guilt is fully warranted. As such, the only issue for this Board to consider is the discipline imposed by the Carrier.

The record indicates that this is a relatively new employee who has been previously disciplined for similar behavior. In fact, following the prior discipline the Claimant had another altercation with the same employee. That second incident ended in a warning that any future altercation would lead to dismissal. This case at bar is a third occasion for the Carrier to concern itself with similar actions of the Claimant.

The Carrier has the right to require its employees to abide by the Rules of the Agreement. Considering the testimony and evidence, the Claimant violated the Rules, engaged in an altercation and then suggests that the other employee is responsible. Each employee is responsible for abiding by the Rules and is not relieved of that responsibility by implicating others as equally or more responsible. The Claimant's past disciplinary record is considered only with respect to whether the Carrier's discipline was reasonable, following a finding of guilt. In these instant circumstances, the Board will not disturb the Carrier's judgement. There is no support for a conclusion that the penalty of dismissal was arbitrary, capricious or unrelated to the seriousness of the violation. The Claim is denied.

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AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

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