

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 14011
Docket No. 13889
10-2-NRAB-00002-090002

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

(Brotherhood Railway Carmen Division of TCU
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Employees’:

1. That the Springfield Terminal Railway Company violated the terms of our current Agreement, in particular Rule 13.1, when James Real allegedly called Mr. Witham, Assistant Manager-Car Shop, a scab.
2. That, accordingly, the Springfield Terminal Railway Company be required to compensate Carman James Real for the sixty (60) day suspension he received. Also, that he be compensated for the holidays that he missed, and he be compensated for all Health and Welfare benefits that he would be entitled to. This is the amount of compensation he would be entitled to had the Carrier not violated the Agreement.”

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 September 11, 2007, the Carrier notified the Claimant to appear for a formal Investigation on September 26, which was postponed and subsequently held on October 4, 2007 concerning the following charge:

"This Notice of Hearing is issued to investigate and place your responsibility, if any, in connection with the following, but not limited to the charge(s) below:

Violation of Guilford Rail System Rule GR-C

Violation of Guilford Rail System Rule GR-C which states in part, 'Any act of insubordination, hostility or willful disregard of the Company's interests will not be condoned and is sufficient cause for dismissal. Employees must conduct themselves in such a manner that their Company will not be subject to criticism or loss of good will.'

Specifically, on September 10, 2007 you called your immediate supervisor, Assistant Manager, Troy Witham, a 'scab.' Furthermore, when given the opportunity to clarify or explain this slur to Mr. Witham, you reaffirmed your earlier remark."

On October 30, 2007, the Claimant was notified that he had been found guilty as charged and was assessed a 60 calendar day suspension.

It is the position of the Organization that the Carrier erred in suspending the Claimant. It argued that the Claimant was not insubordinate, rude or hostile nor did he call Supervisor Witham a "scab." Instead it states that the Claimant told Witham he was "scabbing his work" away from him when he was helping two other Carmen paint lines. It further argued that the language used by the Claimant was nothing more than "shop talk" between two co-workers and if the Claimant had known that the Supervisor was going to take it so seriously, the Claimant would

have apologized. Lastly, it states that no one on the shop floor heard the alleged remark; therefore, the Carrier failed to meet its burden of proof and the discipline should be set aside.

The Carrier argues that there is no validity to the Organization's arguments. It submits that the Claimant is guilty as charged. It argued that there was substantial evidence produced at the Hearing which proves that on September 10, 2007, the Claimant called Supervisor Witham a "scab" which was both insubordinate and disrespectful, and that behavior was witnessed to by Carman Harding. It concluded by arguing that the discipline was not too severe.

After having reviewed the transcript and record, the Board finds evidence that calling of a fellow employee a "scab" does not fall within the parameters of "shop talk" because it is a severe accusation in a unionized environment. The Board further finds that the Claimant testified that he never accused or called his Supervisor a "scab," but instead stated that he said Supervisor Witham was "scabbing his work" as a non-union employee doing his union covered work. Supervisor Witham's testimony is diametrically opposed to that of the Claimant. He testified that the Claimant hollered at him calling him a "scab." No witnesses on the shop floor could verify or corroborate the accuracy of either employee. If that was the extent of the record we would have equally unverified testimony which would not allow the Board to determine what transpired. However, that is not the case in this instance. The transcript indicates that the Claimant was brought into Supervisor Witham's office and was asked if his comment was meant as a joke or if he was serious. The conversation in the office between Witham and the Claimant was overheard by longtime Carman Harding who testified that the Claimant reaffirmed that he had called Witham a "scab" while out on the shop floor. Harding explained that the term is derogatory and a very sensitive subject in the Waterville area because a difficult strike occurred at that location about 20 years ago. Harding further testified that he attempted to persuade the Claimant to rethink his position and apologize to the Supervisor. He stated the following:

"Met Mr. Real outside the freight room door where the oxygen balls are and I got him around the neck and I says hey I want to talk to you. I says I can be your Union rep and I will also be your witness come with me we're going in there, and you're gonna apologize to him.

We're gonna end this thing right now before this escalates. And I says let's go do it. His reply was, to hell with them."

The Claimant would have been well advised to have followed the sage advice of a 41-year veteran of the Carrier who attempted to counsel him and encouraged him to apologize. The record substantiates that the Claimant stuck by his statement, even after his immediate Supervisor explained that charges could potentially be brought against him and even after fellow Carman Harding attempted to intervene on his behalf.

The Claimant testified that he would have apologized if he had known that the incident was going to be taken so seriously. That assertion reveals two things; first, a recognition by the Claimant that his statement on the shop floor to his Supervisor was inappropriate; secondly, it does not withstand scrutiny that the Claimant did not understand the seriousness of the situation because the transcript reveals that Carman Harding corroborated Witham's testimony that the Claimant called his Supervisor a "scab" and was offered an opportunity to withdraw the comment because failure to do so could result in formal charges being brought against him. The Claimant's suggestion that he did not understand the seriousness of the situation is not believable.

Because the record is clear that the Claimant was in violation of System Rule GR-C, the Carrier met its burden to prove that the Claimant was guilty as charged.

The only issue remaining is whether the suspension was appropriate. The Claimant was hired in 2000 and has a Letter of Reprimand and a five day suspension (both of which issued on August 14, 2007) on his record, the latter of which was determined by the Board to be proper in Second Division Award 14019. The instant suspension of 60 days was issued on October 30, 2007. Therefore, the record indicates that the Claimant, who had less than seven years of seniority at the time of the incident, had received three disciplinary infractions within two and one-half months. The purpose of discipline is to correct an employee's behavior. Insubordination is a very serious offense and often justifies discharge. That is because it is an affront to managerial authority and many Boards have determined that the Carrier is not required to run the risk of its repetition by imposing a lesser penalty with the hope that the penalty will correct the employee's future behavior.

In this instance, the Carrier chose not to institute the harsh penalty of dismissal. The Board agrees that dismissal in this instance would have been too severe. We applaud the Carrier's effort to improve the Claimant's behavior using progressive discipline. The Board finds and holds that the 60-day suspension was corrective in nature and not arbitrary, excessive or capricious. Therefore, the discipline will not be set aside.

AWARD

Claim denied.

ORDER

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 14th day of January 2010.