

Award No. 4000

Docket No. 3842

2-C&O-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region and Hocking Division)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That Carman Gordon R. LeGrand was unjustly dealt with when he was dismissed from service March 11, 1960.

2. That accordingly the Carrier be ordered to restore Gordon R. LeGrand to service with seniority unimpaired and compensate him for all time lost subsequent to February 17, 1960.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 17, 1960, Carman Gordon R. LeGrand was actively employed as carman at Parsons Shops, Columbus, Ohio, Chesapeake and Ohio Railway Company. On February 17, 1960, LeGrand presented his resignation as carman at Parsons Shops to Mr. A. B. Ray, general car foreman, and the resignation was accepted by Mr. Ray. Mr. LeGrand has seniority as carman at Huntington Shops, Huntington, West Virginia, date of 8-13-1954, and that seniority was not relinquished at that time and Mr. LeGrand was on furlough as carman at that time and is still on furlough at Huntington Shops, Huntington, West Virginia.

After his resignation as carman, Mr. LeGrand was charged with conduct unbecoming to an employe and using abusive language to superior officer at Parsons, Ohio on February 17, 1960.

Investigation held in the Asst. General Master Mechanic's office March 4, 1960, and on March 11, 1960, Mr. LeGrand was notified by letter signed by Mr. L. H. Booth, General Master Mechanic, as follows:

"Referring to investigation held in the Asst. General Master Mechanic's office at Huntington, West Virginia, 10 A.M., Friday, March 4, 1960.

You have been found guilty of conduct unbecoming an employe

The transcript of the investigation also shows by the testimony of local carman Committeeman Knaul that he personally heard the claimant use abusive and obscene language in addressing Workman.

The general chairman of the carmen did not introduce any evidence in defense of the claimant, but merely tried to excuse the claimant's conduct with the statement that such talk was common on the yards and in the shops.

There are no extenuating circumstances which justify consideration of leniency or the application of discipline less severe than dismissal in LeGrand's case. This is a clear demonstration of an employe seeking to vent his own feeling with respect to one of his superior officers.

The carrier has shown conclusively that it did not act arbitrarily, capriciously or unjustly, nor has it abused the discretion vested in management in its administration of discipline in LeGrand's case; therefore, the discipline administered by the carrier should not be disturbed.

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 employe 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.

The Claimant, Gordon R. LeGrand, was employed as a Carman Apprentice at the Carrier's Huntington (West Virginia) Shops on March 2, 1948, and established seniority as a Carman at that point as of August 13, 1954. Subsequently, he was furloughed from the Huntington Shops and established seniority as a Carman at the Carrier's Parsons Car Shops, Columbus, Ohio, as of December 12, 1957. However, this fact did not affect his seniority rights at the Huntington Shops which remained unimpaired.

In the beginning of 1960, the Claimant believed that General Foreman Workman had unjustly threatened him with dismissal on two occasions. He resented Workman's action and decided to resign from his position at the Parsons Car Shops without relinquishing his seniority rights at the Huntington Shops. On February 17, 1960, he informed General Car Foreman Ray of his intention to resign from the Parsons Car Shops and asked for a meeting at which he wanted Ray and Workman to be present. Accordingly, a meeting was arranged at Ray's office which was attended by Ray, Workman, the Claimant, and Local Chairman Knaul. The Claimant started the discussion by stating that he resigned from the Parsons Car Shop and threw a written resignation notice on a desk. He then turned to Workman and used obscene language. After some further remarks which are not pertinent here the Claimant left.

After an investigation hearing, the Claimant was dismissed from all service of the Carrier, effective as of February 17, 1960. He filed the instant claim in which he contends that he was unjustly dealt with when he was dismissed. He requests an Award to the effect that he be restored to service with accumulated seniority and compensation for all time lost.

In adjudicating the instant claim, we have been guided by the following considerations:

1. At the end of the investigation hearing, the Claimant and his representatives contended that the Claimant was not afforded a fair hearing as provided in Rule 37 of the labor agreement. However, a careful reading of the stenographic transcript has convinced us beyond any doubt that the hearing officer conducted the hearing fairly and impartially constant with the requirements of due process. Consequently, the Claimant's procedural objections are without merit.

2. It is unnecessary to resolve the question as to whether General Foreman Workman wrongly threatened the Claimant with dismissal on two occasions as claimed by the latter. Even if one assumes for the sake of argument, without deciding, that the Claimant was unjustly dealt with by Workman, his only recourse was to file a grievance pursuant to Rule 35 of the labor agreement. See Award 3999 of the Second Division and references cited therein. In no event was he entitled to take matters in his own hands by insulting Workman. Hence, his action was a reprehensible offense.

3. The right of the Carrier to take disciplinary action against the Claimant under those conditions cannot be doubted. We have consistently held that a Carrier's disciplinary action can successfully be challenged before this Board only on the ground that it was arbitrary, capricious, excessive or an abuse of managerial discretion. See: Award 3874 of the Second Division and other Awards cited therein.

The evidence on the record considered as a whole has convinced us that the Claimant's dismissal was an excessive penalty. To be sure we do not condone his conduct. On the contrary, we deplore the vile language used by him. Nevertheless, we regard his remark as a vulgar expression of his disappointment or anger at Workman's presumed unjust treatment rather than a malicious humiliation of the latter. In addition, the record does not reveal that the Claimant had ever been disciplined before in his twelve years of service. Under these circumstances, we believe that a lesser penalty than dismissal is appropriate to do justice to the Carrier's indisputable right to protect its supervisory force from being abused by employes as well as to demonstrate to the Claimant that he was clearly wrong when he insulted Workman.

As a result of his dismissal, the Claimant has been deprived of his seniority rights at the Carrier's Huntington Shops. We are of the opinion that a suspension of fifteen (15) working days is an adequate and equitable penalty for his offense. Hence, we hold that the Claimant's accumulated seniority rights at said Shops shall be restored. Upon recall, he shall not be permitted, however, to work until the period of his suspension is terminated. His further claim for compensation for all time lost is unjustified and hereby denied.

AWARD

Claim partly sustained and partly denied in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May, 1962.