

Award No. 4018

Docket No. 3790

2-L&N-SM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Sheet Metal Workers)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

That under the current agreement the Carrier has unjustly dealt with Sheet Metal Worker B. S. Owen when they terminated his service rights on and since February 17, 1959, and that accordingly the Carrier be ordered to reinstate this employe with all service rights, seniority rights, and all other contractual rights accruing to him.

EMPLOYES' STATEMENT OF FACTS: Sheet Metal Worker, B. S. Owen, hereinafter referred to as the claimant was regularly employed by the carrier at Nashville, Tennessee, at the Radnor Diesel Shop since November 20, 1945. The Louisville & Nashville Decatur Shops was discontinued accounting for his leaving the service of the Louisville & Nashville Railroad Company after 13 years, this making a total of service with carrier of twenty-six (26) years.

The claimant was dismissed from service on February 17, 1959 after an investigation was held at master mechanic's office under date of January 29, 1959. Mr. Owens was charged with insubordination and that he used profane, provocative and uncivil language and conduct towards Assistant Departmental Foreman, J. S. Crunk, on the 11:00 P. M. to 7:00 A. M. shift on the night of January 9, 1959, at Radnor Diesel Shop, Nashville, Tennessee.

The claimant is the only sheet metal worker (pipefitter) on this shift, it is customary when there is more work than one employe can perform on locomotives getting out on this shift to work a man overtime to help get the locomotives out on their runs on time. However, on this shift on the date of January 9, 1959 there were approximately thirty diesel locomotives to be worked on during that particular shift and no one called in to help Mr. Owen to get the work done.

tried to gloss over his use of profanity by saying it was a force of habit and he did not direct it towards anyone. He denied being angry, but stated that "under conditions" he could have used some bad language. He failed, however, to explain any condition that would justify his tirade against management, obviously because no such condition existed. The facts are that the work Foreman Crunk asked claimant to do was pipefitter's duties which he stood to perform. The instructions were readily understandable, and were material to the immediate and efficient operation of the carrier's business. There was no justifiable reason why Pipefitter Owen should not have promptly and willingly complied with them. However, for some reason still unexplained by him, Mr. Owen became extremely angry, railed and cursed against the management for a period of 15 to 20 minutes, went so far as to invite Foreman Crunk outside to fight if he did not like what was being said, and continued his abuse of Foreman Crunk the following night by threatening to knock his head off!

Carrier submits that the supervision of employees is in management, and directions of supervisors must be obeyed if the railroad is to be efficiently operated. The employee must obey orders, and then if he feels that he has been unjustly treated, or that the agreement has been violated, submit his grievance for handling under the terms of the agreement and the Railway Labor Act. Utter confusion and disruption of proper operation of the railroad would result if individual employees were permitted to abuse and threaten bodily harm to their supervisors, and to rail with profanity against the management because they did not like the way the business of the railroad was being conducted, as Claimant Owen did in the instant case. Such conduct cannot be tolerated on the part of any employee and carrier insists it was fully justified in the circumstances in removing Claimant Owen from its service and that the disciplinary action taken should not be disturbed.

In conclusion, carrier reiterates:

(1) That this claim is definitely barred by time limit rule and should be dismissed by this Board for lack of jurisdiction to consider it.

(2) If for any reason this Board should consider the case on its merits, then the record shows conclusively that claimant was guilty of the serious charges against him in view of which his dismissal was entirely justified and the claim in its entirety should be denied.

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.

The claim is that the Carrier unjustly discharged Claimant and should be ordered to reinstate him.

The charge was denied by Claimant at the hearing but was amply sustained by the evidence of witnesses, including two who disclaimed hearing

or seeing anything objectionable, but who nevertheless seized him by the arms and escorted him out. While one of them "just thought we were playing with him," the other admitted that "some words transpired, exactly what I don't remember" and that Claimant "seemed dissatisfied about something," so that it seemed best to take him out to terminate the incident. It was not unreasonable for carrier to infer that Claimant really was "dissatisfied about something" and made his dissatisfaction quite clear as charged.

In the final step of handling on the property Claimant's reinstatement on a leniency basis was requested because "he had admitted he was in the wrong and now realizes he made a very bad mistake in doing what he did".

Under the circumstances we cannot conclude that the carrier's action was wrong, or so harsh as to indicate bias, prejudice, caprice or injustice.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1962.