

**Award No. 4136**

**Docket No. 4106**

**2-SOU-CM-'63**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Ben Harwood when the award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

**SOUTHERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:**

1. That under the current Agreement Carman James A. Farley was improperly suspended March 24, 1961, unjustly discharged from the Carrier's service April 10, 1961.

2. That accordingly the carrier be ordered to reinstate the aforementioned employe to the service with all seniority, vacation, free transportation and employment rights unimpaired and compensate him for all time lost from March 24, 1961 until restored to service.

**EMPLOYES' STATEMENT OF FACTS:** Carman James A. Farley, hereinafter referred to as the claimant, employed by the carrier at Birmingham, Alabama, was taken out of service, charged with insubordination to immediate foreman March 24, 1961.

Formal investigation was held March 29, 1961, and on April 10, 1961, the claimant was notified he was dismissed from the service as carman with the Southern Railway.

This dispute has been handled with the carrier's officers designated to handle such matters, in compliance with current agreement, all of whom have refused or declined to make satisfactory settlement.

**POSITION OF EMPLOYES:** It is submitted the claimant was subject to the protection of the provisions of the aforesaid controlling agreement made in pursuance of the amended Railway Labor Act, particularly the terms of Rule 34, which reads in pertinent part:

"An employe will not be dismissed without just and sufficient cause or before a preliminary investigation, which shall be held immediately by the highest officer in charge at the point employed. If,

(2) There can be no showing that the discipline administered was imposed as a result of arbitrary or capricious judgment or in bad faith.

The Board cannot, in these circumstances, do other than make a denial award.

**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.

From a close study of the entire transcript, it appears proper to conclude, and we so find, that claimant received a fair and impartial hearing at the investigation held on March 29, 1961. None of the matters complained of are shown to have prejudiced claimant's rights.

The record discloses substantial evidence to warrant the findings of carrier that claimant was guilty of insubordination when he refused to follow reasonable suggestions of his foreman concerning a certain method of accomplishing the work assigned (Awards 1253, 1547 and 2715), said conduct being further aggravated by the use of abusive and threatening language toward said foreman when the latter sought to advise claimant with reference to said work (Awards 1253 and 3894).

While there was some conflict in the evidence, it has been uniformly held that the credibility of the witnesses and the weight to be given to their testimony is for determination by the hearing officer (Awards 2996, 3266 and 3894 supra). We are unable to find that the judgment of the carrier or the penalty of dismissal assessed by it was arbitrary, capricious or in any wise an abuse of managerial discretion.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1963.