

**Award No. 4223
Docket No. 3932
2-NYNH&H-CM-'63**

**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. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

**THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Car Inspector J. J. D'Elia Jr., was unjustly suspended and thereby deprived of his earnings between January 8 and March 22, 1960, both dates inclusive.

2. That the Carrier be ordered to compensate Car Inspector J. J. D'Elia, Jr., for all time lost, including incidental overtime, during the aforesaid period.

EMPLOYES' STATEMENT OF FACTS: The New York, New Haven and Hartford Railroad Company, hereinafter called the carrier, employed J. J. D'Elia, Jr., hereinafter called the claimant, as a carman helper, car Inspector and/or carman for approximately nineteen (19) years, at its Hartford, Connecticut, Car Department.

On January 8, 1960 the claimant was assigned to a relief Carman's position on the Hartford Car Department repair track, with hours of 8:00 A. M. to 4:00 P. M. and rest days Sunday and Saturday. On the foregoing date, at about 8:30 A. M., the claimant with his helper and car department clerk, were having a cup of coffee in the car department office, when he was approached by General Foreman A. Crawford and Assistant General Foreman F. Jack. The general foreman asked the claimant two questions and then immediately suspended the claimant from the service of the carrier.

By letter of January 11, 1960, the claimant was notified that he was suspended from service.

By letter of January 13, 1960, the claimant was notified of the charges to be preferred against him at a hearing to be held on January 15, 1960, at 1:00 P. M., at the Hartford Engine House.

Factually, the record establishes that while claimant was making out and signing his work reports on Engines Nos. 1229 and 1502, General Roundhouse Foreman E. B. Cundiff was critical of claimant's work and told him he didn't think he had done eight hours of work. This it was proper for the supervising officer to do, as he has a right to discuss with and criticize an employe's work. In response to this criticism claimant became abusive, using violet and obscene language, and threatened the use of physical violence. He was insubordinate to his superior.

Discipline is a necessary adjunct between employes and their superiors in order to have proper relations between them. An employe must be obedient to the orders of his superior. . . . We find the dismissal fully justified by the facts shown in the record."

Carrier respectfully submits that the discipline imposed in this case should not be disturbed by your Honorable Board.

The claim 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 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 waived right of appearance at hearing thereon.

It is undenied that for at least the first thirty minutes of his shift claimant was absent from his duties as carman without permission, that he used vile and abusive language toward the general foreman for suspending him on that account, and that he was also guilty of the third charge in his angry rush for a telephone with the intention of phoning the master mechanic, apparently, the general foreman's immediate superior.

If the record had left any possible doubt of claimant's guilt the general foreman's alleged statement the preceding summer that the company was after claimant and would get him might have been entitled to some weight if introduced at the hearing; but the general foreman's testimony was amply substantiated by that of other employes, including claimant's own admission, and the facts are undisputed.

It is argued that the hearing was unfair for several reasons. The first is that the hearing should have been conducted by the general foreman instead of the master mechanic because grievance claims are required to be taken first to the general foreman, and decisions appealed successively to master mechanic, to general mechanical superintendent, and finally to the Vice President, Labor Relations & Personnel. But the Rules provide only that discipline hearings must be held by "a designated officer of the carrier" (Rule 34), and do not provide that he shall be the officer to whom grievances shall be initially presented.

If the grievance rule had applied and the complaint were that one appeal step had been denied claimant, it would seem to have been waived by the Organization's election to appeal directly from the master mechanic to the Vice President, thus by-passing an appeal step.

Finally, the general foreman's testimony was necessary at the hearing, and objection would certainly have been made if he had also presided.

Objection is made that the claimant was sent home on January 8 (Friday) but not given written notice of suspension until January 11 (Monday); that the written notice on January 13 of hearing on January 15 (Friday) gave insufficient notice and that when the stenographer proved incapable of taking the testimony at the hearing was postponed to January 20 (Wednesday) it was not held promptly; that the hearing was set by the carrier for the general foreman's office and moved to the trainmaster's office over the claimant's and local committeeman's objection; that it was not moved to the scene of the incident; that the hearing officer had obtained written statements from the witnesses before the hearing.

None of these matters constitutes a violation of Rules, indicates prejudice, or is shown to have affected claimant's interests in any respect.

The claimant's loss of time before his return to service was not excessive, and did not constitute arbitrary, unreasonable or unjust discipline, under the circumstances shown by the record. On the contrary, claimant's early restoration to service shows extreme leniency, in view of claimant's attitude toward fellow-employees as well as superiors.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1963.