



Award No. 4999
Docket No. 4814
2-CMS^tP&P-MA-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Machinists)**

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES:

1. That Machinist Helper, Meritt Chandler's discharge from the services of the Chicago, Milwaukee, St. Paul and Pacific Railroad, effective May 5, 1964 was unjust, and

2. That accordingly, the Carrier be ordered to restore Machinist Helper Meritt Chandler to service with seniority rights unimpaired, compensated for all time lost, made whole for all vacation rights, and the Carrier shall pay all premiums to cover hospital, surgical, medical and life insurance benefits during the time he was withheld from service.

EMPLOYEES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, employed Meritt Chandler, hereinafter referred to as the claimant, on April 2, 1948 as a machinist helper. At the time of his discharge, claimant held a position in the Milwaukee Diesel House, with assigned hours of 11:00 P. M. to 7:00 A. M., rest days of Wednesday and Thursdays. Claimant was notified by mail on April 1, 1964, that pending investigation, he was suspended from service for entering into an altercation at about 3:10 A. M. the morning of March 31, 1964 outside of the diesel house locker room. A standard investigation was held on April 20, 1964 with the subsequent discharge of the claimant from the services of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

The protest on the dismissal of this claimant has been handled in accordance with the current agreement effective September 1, 1949, up to and with the highest designated carrier officer to whom such matters are subject to appeal, with this officer declining to give it any consideration for settlement.

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. In view of the seriousness of the Claimant's offense, we are unable to find that his dismissal from service was influenced by such unreasonable considerations on the part of the Carrier."

SECOND DIVISION AWARD NO. 4098

"An employer's premises are a place for the peaceful performance of work. They are not a battleground. Fighting on the premises generally runs counter to the elementary requirements of plant efficiency, discipline, and safety. The employer's right to invoke disciplinary penalties, including dismissal, against the guilty party is, therefore, beyond doubt. * * * * *

The law is well settled that a disciplinary penalty imposed by a Carrier upon an employe can be challenged before this Board only on the ground that it was arbitrary, capricious, excessive or an abuse of managerial discretion. See: Awards 3874 and 4000 of the Second Division. The Claimant's dismissal was not founded upon such illogical or unreasonable motives. He was the aggressor and his dismissal was a reasonable exercise of managerial discretion. He was dismissed from the Carrier's service for just and sufficient cause within the contemplation of Rule 16(a) of the applicable labor agreement."

There can be no doubt but what the responsibility of Mr. Chandler in connection with the serious charges preferred against him was fully developed and in view thereof the carrier submits that the discipline assessed was neither unjust, arbitrary or unreasonable, but rather, under the circumstances prevailing, was justified and warranted and we respectfully request that the carrier's action not be disturbed and the claim 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.

Merritt Chandler entered service of Carrier, as a Machinist Helper on April 2, 1948. On March 31, 1964, said employe engaged in an altercation with another employe while on duty on Company property, with Walter Romais, a Machinist Helper, who was not on active duty, but had come on the property to obtain his pay check from his foreman.

On April 1, 1964, the claimant here was suspended from service by Carrier, and on April 20, 1964, an Investigation and Hearing was held by

Carrier, where witnesses were produced by both Carrier and the Organization, and testimony taken. At the Hearing it was shown by evidence that the claimant had struck Mr. Romais at least with three severe blows to the stomach, head and jaw. He was removed to a hospital from the severe beating, and also four fractures to his jaw. As a result he was disabled for a period of some seven months.

Investigation and Hearing was held by Carrier on April 20, 1964, and on May 5, 1964, Carrier by its decision discharged the claimant from its service.

The Board upon a complete and thorough review of the record here finds that Carrier properly charged Claimant with a violation of Safety Rule No. 2, as promulgated by Carrier for the protection and safety of employes assigned to the Engine and Car Departments. Safety Rule No. 2 reads as follows:

“Playing practical jokes, scuffling or wrestling while on duty is prohibited.”

The record here shows that said Claimant readily testified that he violated the provision of Rule No. 2, and after considering the whole record here, the Board is of the opinion that said Claimant did knowingly and willingly violate said Safety Rule No. 2, and was proper procedure relied on by Carrier. See Second Division Award No. 198.

The Board is of the further Opinion that the said claimant was in all respects the aggressor and without provocation attacked said Romais, causing him serious injuries and lengthy disability from service for Carrier.

Carrier provided claimant with a fair and impartial Investigation and Hearing, and at no time did Carrier act in an unjust, unfair, improper or arbitrary manner.

The claim should be denied.

AWARD

Claim denied as per the foregoing Findings and Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1966.