

Award No. 5139

Docket No. 4993

2-NYC-FO-'67

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harold M. Weston when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Firemen & Oilers)**

**THE NEW YORK CENTRAL RAILROAD
(Eastern District)**

DISPUTE: CLAIM OF EMPLOYEES:

1 - That the Carrier violated the provisions of Rule 24 of the current agreement when they dismissed laborer Rocco Migliazza at Suspension Bridge Engine House, Niagara Falls, New York.

2 - That Laborer Rocco Migliazza be compensated for all wages lost with seniority, health and welfare and vacation rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Laborer Rocco Migliazza (hereinafter referred to as the claimant), was employed by the New York Central Railway Company (hereinafter referred to as the carrier) as such November 22, 1944, having almost 20 years' service without a blemish on his record.

In letter dated June 29, 1964, Terminal Foreman J. W. Everitt advised the claimant to appear for hearing at 1 P.M. (EDT), on July 7, 1964, on charges set forth therein.

Hearing was held on July 7, 1964.

In letter dated July 12, 1964, Master Mechanic W. C. Wardwell advised the claimant he was dismissed from service.

The dispute was handled with carrier officers designated to handle such affairs, who all declined to adjust the matter.

The agreement effective August 15, 1952, as subsequently amended, is controlling.

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.

Claimant, a laborer with some 20 years of service, was dismissed on July 13, 1964 for assaulting and being insubordinate to Terminal Foreman Everett on June 23, 1964.

The evidence amply supports Carrier's findings in this matter. On the night in question, Everett went to the machine shop and, in the course of investigating an incident that had occurred several nights before, asked Claimant about "the sand situation". The latter replied, in a loud and profane manner, that he was not taking orders from Everett. When Everett asked him whether he wanted to work for the Company, Claimant said that he would kill Everett and they would have to carry him out. Everett then informed Claimant that he was taking him out of service and, being unable to quiet him down, summoned a Carrier patrolman. As Claimant was being led away, he continued to use vile language and again threatened to kill Everett. Everett followed Claimant and the patrolman to the locker room where Claimant struck him on the head with a lunch bag containing a thermos bottle. Everett thereupon was taken to a hospital where five stitches were required to close the wound in his head.

Some point has been made that Everett was not Claimant's foreman and that he would have displayed better judgment if he had not followed Claimant to the locker room while he was in an uncontrollable rage. These arguments are unimpressive. Everett had every right, and possibly the duty, to see that Claimant was out of the working area and we do not intend to require a foreman to circumscribe his own movements on the property because of a troublesome employe. It was Claimant's obligation to answer Everett's questions in a cooperative manner and if he wished to challenge the foreman's authority, the proper way was through the orderly machinery of the grievance procedure.

No foreman nor, for that matter, any employe need be subjected to the kind of violence and extreme threats engaged in by Claimant. They are not the type of risks that a workingman should be required to put up with while on the job, even after all due latitude has been accorded the varying temperaments, sensitivity and emotional makeups of the employe complement.

The record contains no medical or other evidence of mitigating circumstances and although we are mindful of Claimant's lengthy and good service record, we are well satisfied, upon balancing all the considerations, that Carrier's decision to terminate Claimant's employment is well considered and proper.

The claim will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1967.