

Award No. 6064
Docket No. 5927
2-CUT-EW-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. McPherson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 150, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, the Cincinnati Union Terminal Company unjustly dismissed Mechanical Maintainer Eugene Hinton from service on April 16, 1969, subsequent to, and resulting from formal hearing conducted on April 15, 1969.

2. That accordingly the Cincinnati Union Terminal Company be ordered to immediately reinstate Claimant Mechanical Maintainer Eugene Hinton to the service of the Carrier with seniority rights unimpaired, paid for all earning time lost subsequent to his dismissal on April 16, 1969, and made whole with respect to his vacation rights, hospitalization, medical and surgical care and group life insurance, and for the removal of any reprimand and/or disciplinary notation from his service record.

EMPLOYEES' STATEMENT OF FACTS: On March 20, 1969, Eugene Hinton, Mechanical Maintainer, hereinafter referred to as the claimant, was involved in a parking lot incident with one Robert Mitchell, Mail Sorter, both men being employees of the Cincinnati Union Terminal Company, hereinafter referred to as either the carrier or CUT.

Investigations were held March 31, 1969 on Robert Mitchell and the scheduled hearing of April 8, 1969 on Eugene Hinton was postponed until April 15, 1969 at the request of the then General Chairman F. E. Beyer, which notice reads as follows:

"April 2, 1969

Mr. Eugene Hinton
Mechanical Maintainer
4 Lloyd Avenue
Florence, Ky. 41042

jeopardize the lives and property of all the Cincinnati Union Terminal employees.

After hearing all the evidence the hearing officer found Mr. Hinton guilty as charged. After he was found guilty his service record was considered in determining the amount of discipline to be assessed, and in the opinion of the hearing officer, these factors justified his dismissal. When the claim was appealed to the manager's office, the record of the hearing, Mr. Hinton's complete record, and the matters contained in the appeal letter were carefully considered and no basis was found which would warrant changing the decision of the hearing officer.

Considering the foregoing discussion and the record on which it is based, carrier believes the record shows claimant was dismissed on proven charges after a fair and impartial hearing which complied in every respect with the effective agreement. Under similar circumstances the National Railroad Adjustment Board has denied the request of the employees, and this carrier respectfully requests this board to follow a long line of precedent Awards. The National Railroad Adjustment Board has developed certain principles in a long series of Awards on discipline cases. These principles are enumerated at length in Third Division Award No. 8431.

CONCLUSION

The record clearly reveals that Mr. Hinton, by his own admissions and the corroborating testimony of several witnesses, was guilty as charged. Carrier has grave responsibility by firm and decisive discipline to prevent the utter chaos that would result by an evasion of this obligation. Cincinnati Union Terminal employees are entitled to enter the Carrier's property to perform their duties without threat of bodily harm or deliberate damage to their personal property. Carrier action in this case was nothing more than proper administration fully within the rules of the agreement designed to protect all the employees. Based on the record and what has been said heretofore, carrier respectfully requests this board deny the claim in its entirety.

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 Carrier charged the Claimant with conduct unbecoming an employee of the Carrier in that he engaged in a dispute with another employee on March 20, 1969, in the Carrier's parking lot, in which he threatened by word and action to back his vehicle into the other employee's car.

Testimony at the hearing held on the property shows that the incident began when the Claimant noticed near the end of his shift that another car

was blocking his in the overcrowded parking lot. This was the first time he had been blocked in by that car. He learned from other employes that the car belonged to Mr. Mitchell. A call was broadcast for Mr. Mitchell to move his car. When he came out and was walking toward his car, Claimant told him that if he blocked him in again, Claimant would back into his car. Mr. Mitchell replied that if he did, one of them would be a dead man. Claimant repeated his threat, and Mr. Mitchell said, "There it is. Go ahead." Claimant entered his car and started to back up, but stopped before hitting the other car, which was then moved out of the way by Mr. Mitchell.

The Organization contends that the Claimant was merely trying to correct an undesirable parking condition by a meaningless threat and that the penalty of discharge was excessive in view of his long and satisfactory service record. The Carrier contends that the Claimant was admittedly guilty as charged and that its decision to dismiss him was not unjust, unreasonable, or arbitrary in view of Carrier's responsibility to protect its employes from damage to their personal property while at work and to prevent any increase in racial tensions.

A careful study of the hearing transcript leads us to the conclusion that what would otherwise have been a simple inconvenience became a potentially explosive situation, due to the provocation of Claimant's threats.

The Board finds that the Carrier's decision that Claimant was guilty as charged is supported by the record and that the penalty assessed was not arbitrary or unreasonable. The discharge is therefore sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December, 1970.