

Award No. 6153
Docket No. 5971
2-SOU-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current Agreement, Carman C. F. Sims, Birmingham, Alabama, was improperly suspended from service December 14, 1968, until 8:00 A. M., January 12, 1969.

2. That accordingly, the Carrier be ordered to compensate the aforementioned employe for all time lost from December 14, 1968, to January 12, 1969, at 8:00 A. M. and that the suspension be removed against Carman Sims.

EMPLOYEES' STATEMENT OF FACTS: Carman C. F. Sims, Birmingham, Alabama, hereinafter referred to as the claimant, was employed by the Southern Railway Company, hereinafter referred to as the carrier, at Birmingham, Alabama, and was removed from service December 14, 1968 until 8:00 A. M., January 12, 1969, charged with engaging in an altercation with Carman C. H. Johnson while on company property on December 13, 1968; also threatening bodily harm to Carman C. H. Johnson, Mike Ross, and others.

Formal investigation was set for 2:00 P. M., December 18, 1968, after several postponements which were mutually agreed upon by all, the formal investigation was held on December 23, 1968, at 10:00 A. M.

In a letter dated January 8, 1969, claimant was advised by Mr. C. A. Jay, carrier's master mechanic, that he was guilty as charged and, therefore, was suspended from service from December 14, 1968, until 8:00 A. M. on January 12, 1969.

Per letter dated January 17, 1969, Attorney John J. Smith, who was engaged by claimant to represent him at the investigation, replied to Master Mechanic Jay's letter of January 8, 1969, pointing out that the transcript of the investigation failed to prove claimant guilty and claiming pay for all time

Carrier treated both participants of the altercation equally when assessing discipline.

CONCLUSION

1. Carrier has observed all of the procedural rights of the claimant under the current agreement.
2. Carrier has accorded the claimant his fundamental rights of due process.
3. Carrier has proven the claimant guilty as charged of engaging in an altercation with Carman C. H. Johnson while on company property on December 13, 1968 by substantial probative evidence adduced at a fair and impartial investigation.
4. Carrier has acted with reason and responsibility when assessing discipline, considering that the altercation concerned a threat of possible physical violence with a knife.
5. Carrier has proven that Second Division Awards of the National Railroad Adjustment Board have overwhelmingly supported carrier's prerogative to assess discipline.
6. Carrier has treated both participants in the altercation in kind.

The Brotherhood has not and cannot prove the validity of its claim based upon the record. The evidence supports a denial award and the carrier respectfully requests that the Board render same.

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 review and examination of the entire record, it is clear that Carman C. F. Sims threatened to commit bodily harm with a knife to two other employes. The Board therefore finds that the 30 day disciplinary suspension of claimant Sims was warranted. The Board also find that the Carrier was not arbitrary or capricious, that Carrier afforded complainant a full hearing, and finally the Board finds that in view of all the facts and evidence, the 30 day disciplinary suspension was not excessive or harsh.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1971.

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