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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6402
Docket No. 6224
2-CRI&P-CM-'72

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Chicago, Rock Island and Pacific Railroad Company

Dispute: Claim of Employes:

(1) That under the controlling Agreement, Carman J. W. Elliff was unjustly suspended from the services of the Carrier for ninety (90) days.

(2) That accordingly, the Carrier be ordered to compensate Carman J. W. Elliff for all time lost in this ninety (90) days.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all 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.

This is a discipline case in which the Organization protested the decision and penalty claiming that it was based upon the unsupported testimony of claimant's supervisor, the Train Yard Foreman. In Employes' Submission, under Position of Employes', p 2-4, no protest was made concerning the notice or conduct of the hearing under Rule 34 of the Agreement. Objection was raised to the introduction of testimony at the hearing regarding an incident which occurred two years earlier between the claimant and the Train Yard Foreman.

The record of the hearing disclosed that while the claimant and two other carmen were working on a car, the foreman complained that the work was progressing too slowly. The foreman testified that claimant told him to watch out for himself rather than to watch him. When the foreman asked claimant to clarify this, claimant answered that the foreman knew what he meant. The foreman then volunteered that he understood the answer because two years earlier, when the foreman had problems with him, the claimant had told him to watch his step because a brake shoe might fall off a box car on his h..

The foreman then testified that when he returned to observe the work a little later, claimant had to go to the rest room. The foreman took him there and back to the work site in his truck. The foreman testified that during this ride, while they were alone, claimant stated to him that he really meant what he had said about the brake shoe falling on the foreman's head and that the foreman better watch out. Also that claimant told foreman during the ride that if the foreman had anything to do with the firing of any carman, he would personally see to it that the foreman would leave, "one way or another." The foreman also testified that the next day, claimant asked him what bar he hung out at saying that, "he just wondered."

Claimant testified that the foreman's entire statement was a lie. His own version was as follows: The foreman came to the work site nervous and upset. Claimant who was working alone on the opposite side of the car but trying to listen, heard the foreman tell the other carmen that he had been threatened about having a brake shoe fall on his head, that he wasn't "afraid of any man walking", that he knows, "how to handle you men". Claimant testified that the foreman then came around to him and because the foreman either did not like the way claimant was looking at him, or knew that he didn't care for the way the foreman was treating the men, the foreman tried to get claimant, "to say something that would be incriminating". Claimant then asked the foreman to clarify what he meant by, "threat", but foreman replied that it was, "not worth discussion".

When asked by the master mechanic conducting the hearing what he meant by his statement about the way the foreman treated the men, claimant testified that the foreman had an attitude of, "a Godlike power over each and every man under him", that, "When I say move-you better move!", and that "he looks at himself as being far superior to anyone else around him".

One of the carmen who was working with claimant at the time, testified in detail about the progress of the work and the foreman going over it with them. The witness stated that at one of the times that the foreman came back to the work site, the foreman spoke of threats about brake shoes falling on his head but none scared him, "that he had been around men like us before and he would see men like us in the future". The witness testified that the foreman was in, "a pleasant disposition and smiling in a friendly manner", when he spoke of this. Further, the witness stated that the foreman started to leave, but came back, and standing with the witness and the other carmen, called claimant over and said to claimant, talking about the brake shoes; "are you threatening me? If you are, I have Louis and Ted here by me". Claimant answered, "no", and went back to his oiling. The witness testified that the foreman was no longer in, "an eased manner", and "looked as if he was serious". This witness verified that claimant and foreman had driven off in the truck toward the locker room.

During the hearing, two representatives of the claimant were present and participated. One of them protested that the hearing was not being held pursuant to Rule 34 of the Agreement. He also protested that the foreman's testimony of events which occurred two years earlier had no bearing on this hearing. Both representatives stated that they understood that they could provide any additional information and could record any protest during the hearing.

Claimant testified that he was familiar with Rule "N" of Form G-147 Revised which provided, in part that, "Employes must not be: (3) Insubordinate, (6) Quarrelsome or otherwise vicious".

We find nothing wrong with the notice and conduct of the hearing. The notice was timely, specific as to the charge and advised claimant of his right to be represented and to produce witnesses. He was represented at the hearing and did produce a witness. Full opportunity was provided at the hearing to offer testimony or information, to question witnesses and to state any objections. We do not consider the foreman's testimony of the incident two years earlier as entitled to any weight in arriving at the decision.

As we said in our Award No. 6372 decided recently, when it is one man's word against another, we cannot sustain a claim simply because the claimant denies the charge. If the one who conducted the hearing chose to believe one man as against the other, we will not upset his decision if there is evidence to support it. No claim appears in the record before us that the decision was made arbitrarily or in bad faith, and we do not find this to exist, from reading the record of the hearing.

The testimony of the claimant at the hearing showed that he disapproved of the foreman to the extent he might have made the threat. Rule "N" of Form G-147 Revised, was designed to prevent personal antagonisms on the job by requiring, "courteous deportment of all employes in their dealings with--their subordinates and each other."

In evaluating the testimony of the claimant and the foreman, some light is shed by the testimony of claimant's witness who contradicted the claimant in describing the foreman's manner and attitude. It is possible to conclude from his testimony that the foreman had decided to become serious after being threatened while riding in the truck with the claimant and to ask in the presence of the other two carmen, if claimant was threatening him.

We believe that there is sufficient evidence so that we will not upset the decision, in this case. See Second Division Award No. 6281.

It is possible, however, that the degree of the penalty was influenced by the foreman's reference to events of two years earlier which was not reported at that time. We believe that the same result would be accomplished by reducing the term of suspension from service to the period from October 9, 1970 until December 24, 1970.

AWARD

Claim is sustained except as stated above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November, 1972.