Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6680
Docket No. 6568
2-A&S-MA-'74

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Alton and Southern Railway Company

Dispute: Claim of Employes:

1. That the Alton and Southern Railway Company violated the controlling Agreement when it unjustly and improperly discharged Helper Machinist W. Riester on May 3, 1972, as a result of investigation held on May 1, 1972.

2. That accordingly the Alton and Southern Railway Company be ordered to restore Helper Machinist Riester to its service, with all seniority, vacation, insurance and all other rights and benefits unimpaired and to properly compensate him for all wage loss retroactive to date of discharge.

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.

Claimant, a machinists' helper, was charged with threatening to strike the General Foreman, on April 22, 1972. Following an investigation he was dismissed from service on May 3, 1972.

Petitioner first claims that the hearing was improperly conducted since the hearing officer was "the charging officer, interrogating officer and was the judge and jury", citing Award 6329 as authority. We note that in the Award cited, as well as in earlier awards dealing

with the identical problem, the hearing officer acted as a witness as well as the other roles indicated above, and under those circumstances only did we find that the hearing was unfair. In this dispute the hearing officer did not testify and the transcript offers no evidence of bias or unfairness; we do not find that one individual in the role of charging officer, interrogating officer, judge and jury per se deprived the Claimant of a fair hearing.

The transcript of the investigation herein contains evidence of some strong language as well as the phrase: "I ought to knock you in the mouth" attributable to Claimant. Since we cannot deal with matters of credibility (Award 6281) it is clear that there was substantial evidence to support Carrier's conclusion in this matter: two witnesses supported the charge, which was denied by Claimant. The record, however, also reveals that Claimant had been the Local Chairman of the Organization and had in the past engaged in a number of arguments (some heated) with the General Foreman. Further, an examination of the record indicates that the General Foreman was not entirely blameless in the altercation, having engaged in somewhat provocative behaviour himself. For these reasons we conclude that the discipline imposed was arbitrary and constituted an abuse of discretion. (See Award 6639).

A W A R D

Claimant shall be reinstated, with all rights unimpaired, but with no compensation for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of April, 1974.