

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

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Southern Pacific Transportation Company
((Pacific Lines)

Dispute: Claim of Employees:

1. That under the current Agreement, Mechanical Department Electrician Wesley L. Kessel was unjustly treated when he was dismissed from service on December 28, 1971, following investigation, for alleged violation of Rules 801, 810 of the General Rules and Regulations of the Southern Pacific Transportation Company on November 26, 1971.
2. That accordingly, the Carrier be ordered to:
 - (a) Restore the aforesaid employee to service, with all service and seniority rights unimpaired, compensate him for all time lost and with payment of 6% interest added thereto.
 - (b) Reinststate all vacation rights for the aforesaid employee.
 - (c) Pay Southern Pacific Employees Hospital contributions, including dependents' hospital, surgical, medical and death benefit premiums for all time that the aforesaid employee is held out of service.

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.

We find the record to support Carrier's conclusions that Claimant when questioned by Carrier patrolmen refused to identify himself, assumed an attitude of belligerent defiance towards the officers and addressed them with obscene and insulting imprecations.

As to the charge that Claimant later left work without permission, Claimant testified that at about 8:00 a.m. while on assignment he sought to find his superior to receive permission to check his auto for ticket but could not find him. He therefore approached Leadman and addressed his request to him. Claimant further states that Leadman "was talking to someone else, but he shook his head and I took it as an affirmation that he understood what I had said."

Claimant's own version of this incident reveals that he acted on less than clear authority in absenting himself and he is culpable in this respect.

Finally, Carrier is justified in concluding from the record, that in the course of this absence from his work post, Claimant approached a patrolman on duty for Carrier and announced to him that "those two officers who wrote me a ticket better watch themselves because I am going to crush their f---ing skulls with a baseball bat" and made other declarations of a destructive intent on his part and of unnamed others, towards railroad and railroad property.

The totality of Claimant's behavior was one of belligerent, obscene and uncontrolled rage of a disruptive nature and full of assaultive threat. Severe disciplinary response by Carrier is justified.

The record indicates, however, that these actions were an irrational and abnormal outburst by Claimant who had no record of adverse behavior of this kind over a period of his more than eight years employment here. Taking this into consideration and also the indications that patrolmen who first approached Claimant may have failed to adequately explain their mission and unnecessarily caused embarrassment to Claimant in presence of latter's car pool companions, we believe that a substantial suspension without pay, covering the period of Claimant's disemployment will adequately serve Carrier's needs and purposes for deterrent and reformatory consequences.

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Award No. 6685
Docket No. 6470
2-SPT(PL)-EW-'74

A W A R D

Claimant shall be restored to service within thirty (30) days without restitution for period of his separation.

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 26th day of April, 1974.