

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

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

Dispute: Claim of Employee:

1. That under the current agreement, Car Inspector N. E. Toews, hereinafter referred to as the Claimant, was unjustly deprived of his service rights and compensation when he was improperly discharged from service under date of July 23 1973 after twenty four (24) years service with the Carrier.
2. That the Carrier be ordered to:
 - (a) Restore the aforementioned Claimant to service with all service and seniority rights unimpaired, and be compensated for all time lost retroactive to July 23, 1973 when he was removed from service, plus 6% annual interest.
 - (b) Grant to the Claimant all Vacation rights.
 - (c) Assume and pay all premiums for hospital, surgical and medical benefits, for Claimant and dependants. Including all costs for life insurance.
 - (d) Pay into the Railroad Retirement Fund the maximum amount that is required to be paid for an active employe for all time he 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 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 was charged with violation of certain portions of Rule 801 when he threatened his foreman with bodily harm at approximately 2:30 a.m. on June 4, 1973. After investigation and hearing, Carrier found Claimant culpable and dismissed him from service. Claimant had been employed for 24 years at the time of his dismissal.

The testimony of the foreman and another employe support the charge that Claimant threatened to strike the foreman with his fists after the foreman ordered Claimant to inspect a train after Claimant sat down to eat his lunch.

The Organization contends that the dismissal was harsh and unusual under the circumstances. Claimant, the Organization asserts, suffered from a disease called Hypoglycemia, and was required to eat every two hours and not later than every three hours; and this fact was known to the foreman. While the record shows that Claimant had Hypoglycemia in December of 1966, there is no evidence in the record that he was suffering from it on the day in question. In fact, the Organization exhibits reveal that as early as six weeks after the incident, Claimant's Hypoglycemia was an "incidental factor and really not significant."

The record further indicates that in June 1971 Claimant was dismissed from service because of his indifference to duty, and was reinstated five months later on a leniency basis.

On the state of the total record, the Board finds that Carrier's action was not arbitrary and capricious and we deny the claim.

A W A R D

Claim denied.

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 2nd day of September, 1975.