

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7009
Docket No. 6762
2-SOU-F&O-'76

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 21, Railway Employees'
(Department, A. F. of L. - C. I. O.
(Firemen & Oilers
(
(Southern Railway System

Dispute: Claim of Employees:

1. That under the Current and Controlling Agreement, as amended, Service Attendant Charles J. Saffron, Social Security No. 290-23-3395, hereinafter called the Claimant, was unjustly suspended from the service by Southern Railway System, hereinafter called the Carrier, for sixty (60) days, from July 12 through Sept. 10, 1973, inclusively.
2. That accordingly, the Carrier be ordered to reverse the sixty (60) days discipline assessed the Claimant, and that he be properly restored to his rightful position with all rights unimpaired and compensated for all time lost.

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 were given due notice of hearing thereon.

On July 12, 1973, claimant was notified that he was charged with conduct unbecoming an employee, and, that an investigation would be held on July 14, 1973. On July 14, 1973, claimant was handed a second notice that additional charges of insubordination and threatening an officer of the Carrier were being added. The hearing was held as scheduled, following which claimant was adjudged guilty of the aforementioned charges and suspended from service for a period of sixty (60) days.

It is the Organization's initial contention that claimant was not afforded a fair and impartial hearing inasmuch as Carrier waited until the morning of

the scheduled hearing before apprising claimant that charges of insubordination and threatening an officer of the Company were to be added to the charges of conduct unbecoming an employee. If this Board were convinced that claimant was not given adequate opportunity to prepare his defense to the charges added on July 14, then the Organization's argument that claimant was thereby deprived of a fair and impartial hearing in violation of the governing Agreement might have validity. However, such is not the case here. The Organization, when apprised of the additional charges, was given the opportunity to postpone the Hearing. However, after consultation with the claimant, Mr. Benton, claimant's representative at the Hearing, agreed to proceed with the investigation. If there was a valid due process argument, it was certainly waived when the claimant and his representative agreed to proceed with the Hearing.

At the foregoing Hearing, substantial evidence was adduced indicating that at the end of his tour of duty on July 10, 1973, claimant had cursed and threatened several other Carrier employees in the parking lot adjacent to the Diesel House at Ludlow Shop. Claimant offered no plausible explanation for his actions. Nor was there brought forth any extenuating or mitigating circumstances which would justify his tirade. When you couple the foregoing to claimant's obvious insubordination toward General Foreman Brown on July 12, 1973, the conclusion is readily apparent that the Carrier has sustained the burden of proving by substantive evidence the charges preferred against the claimant. And sixty days suspension was clearly not excessive in light of the gravity of claimant's actions on July 10 and July 12, 1973.

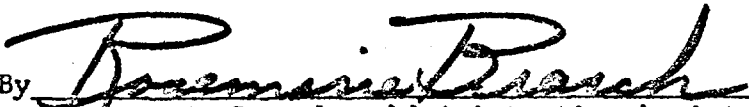
Claimant was afforded a fair and impartial Hearing; the charges were proven; and the discipline meted out was not excessive. Therefore, the claim lacks merit and it will be denied.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of February, 1976.