

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement, Charles Floyd Jr., Carman, was unjustly dismissed from the service of the Illinois Central Gulf Railroad on August 22, 1974.
2. That accordingly the Illinois Central Gulf Railroad be ordered to reinstate Carman Charles Floyd, Jr., to service, paid for all time lost, with seniority rights unimpaired, and any other benefits he would be deprived of while being 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, an upgraded Carman employed at Carrier's Johnston Car Shop, was discharged following a hearing and investigation into charges that he failed to follow instructions of supervisors on July 31, 1974; and with threatening to do bodily harm to two of his supervisors as well as punching out and leaving the job without permission on August 1, 1974. The record also shows that Claimant was suspended for two weeks between the

incidents and his hearing on August 15, 1974. The Organization appealed the suspension on the grounds that it was not warranted and the hearing not prompt. Also, the Organization appealed the dismissal on the grounds that the charges were not supported and that Claimant was being harassed. At the Board level allegations of prejudicial procedural irregularity and prejudgement also were raised for the first time. It is too well understood to require documentation that we will not consider such de novo arguments which were not aired on the property.

Confining our considerations, as we must, to the arguments raised on the property, we cannot concur with the Organization the record fails to support the charges. There is substantial corroborating testimony from several witnesses that Claimant failed to follow repeated supervisory instructions on July 31, 1974; that he was therefore reduced to helper on August 1, 1974 and immediately threatened the supervisors involved; and that he shortly thereafter announced without explanation or permission that he was going home, whereupon he punched out and left the job. Standing against this evidence is Claimant's bare, unsupported and noncorroborated denials, together with a belated explanation of illness. Apparently the Hearing Officer in the case resolved the credibility question against Claimant. In such circumstances our role is a limited one to wit: we may not at this appellate level weigh credibility de novo but rather must defer unless the findings are manifestly unsupported by the evidence. In this respect the guiding principles are succinctly stated in Award 5211 quoting earlier Award 2996 as follows:

Award 5211 (Johnson)

"As this Division said in Award No. 2996:

'While there was conflicting testimony adduced at the investigation of the charges against the claimant, there was substantial evidence to reasonably support the decision of the carrier. Under such circumstances we may not substitute our judgement for that of the carrier.'

This principle has been so well settled for so many years as not to be further debatable. Since the record contains adequate evidence to sustain the Carrier's action the claim must be denied."

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Docket No. 6844
2-ICG-CM-'76

In light of all the foregoing and our careful review of the record we shall 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 Ibes
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of August, 1976.