

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

Parties to Dispute: (System Federation No. 7, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Burlington Northern Inc.

Dispute: Claim of Employees:

1. That in violation of the current working agreement Mr. O. E. Knight, Electrician, Burlington Northern, Inc., was unjustly dismissed on August 5, 1975.
2. That, accordingly, the Carrier be ordered to compensate Mr. Knight for all time lost and the record of the dismissal be removed from his personal record.

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 O. E. Knight was employed as an electrician at Carrier's roundhouse facilities at Denver, Colorado on the 3:30 to 11:30 p.m. shift. Following a hearing and investigation on July 21, 1975, Claimant was notified on August 5, 1975, that he was dismissed for violation of Rules 57, 668 and 667 of Carrier's Safety Rules, for failure to comply with instructions from the roundhouse foreman, and for entering into an altercation with the foreman during claimant's tour of duty July 2, 1975.

Claimant had been an employee of the carrier for approximately thirty (30) years at the time of his dismissal.

Petitioner argues that the Carrier's action in dismissing the Claimant from service was an arbitrary, capricious and unjust action.

The transcript of the hearing and investigation contains statements by the Claimant that he "strenuously" objected or refused to follow the roadhouse foreman's instructions, which were issued several times, because of the foreman's "persecution"; that he grabbed the foreman around the neck "with no malice in mind whatsoever"; that he did not take exception to statements by the roundhouse foreman and relief foreman concerning the claimant's grabbing the foreman around the neck; that he had "no knowledge" of using profane and vulgar language to the foreman, as testified to by both the roundhouse foreman and the relief foreman.

We have reviewed the entire transcript included in the record before us, but find no corroboration of the Claimant's allegation of unfair treatment by the roundhouse foreman. The record is also silent as to any prior claim or allegation by the Claimant concerning the roundhouse foreman's partiality or unjust behavior or work assignments to employees under his supervision. Real prejudice on the part of the foreman could not be shown.

Petitioner also maintains that Claimant was not afforded a fair investigation, in that the same Carrier Officer notified Claimant to appear for investigation, presided over and conducted the investigation, interrogated the Claimant and some of the witnesses, repeatedly interrupted the Claimant's representative, would not allow events leading up to the incident and favorable to the Claimant to be brought into the investigation, and finally dismissed the Claimant from Carrier service. In sum petitioner alleges, "These dual and biased roles of the investigating officer" are unfair and constitute a denial of due process.

We find no defects in the investigation procedure to constitute reversal. The record does not sustain Petitioner's claim that Claimant was denied a fair hearing because the same individual conducts the hearing and renders the decision. Many prior Board rulings have so found. See Third Division Awards 20673 (Edgett), 16678 (Perelson), 20027 (Blackwell) and Second Division Award 5855 (Stark) among many others.

Refusal to obey a direct work order issued by a supervisor is a major offense, constituting insubordination. If an employee believes the order to be wrong as a violation of the Agreement or as the assignment of work that is outside his classification of work, he must nevertheless comply with the order and then file a grievance. The basic rule is for an employee to follow the instructions of his supervisor (unless obviously unsafe or unlawful) and take up the issue under the grievance procedure if he believes management did not have the right to give such orders or instructions.

If an employee is insubordinate to a supervisor or if he threatens a supervisor with bodily harm, or if he physically attacks a supervisor, the Carrier may impose severe disciplinary penalties, including discharge. The use of profane and abusive language towards a foreman who is engaged in the performance of his supervisory function may properly be regarded by management as a matter of special concern; indeed, may constitute insubordination, especially where the language exceeds usual shop talk or the norms of the work group.

As noted above, the Claimant, by his own admission, engaged in improper conduct and committed serious offenses. As a result, he subjected himself to the possibility of discipline by the Carrier.

On the other hand, the Claimant has had a good work record during his 30 years of service. The roundhouse foreman, to whose orders the Claimant objected, stated at the hearing that the Claimant was "one of the best electricians we had". Insofar as the record indicates, this was the first instance in which the Claimant had ever given cause for disciplinary action during his entire service of 30 years. The events culminating in his discharge occurred during one shift. There was no showing of any prior improper conduct or insubordination prior to that time. Despite a careful review of the transcript of the hearing in the record before us, it is difficult to understand why the Claimant chose to act as he did on the shift in question. The Claimant's actions that day appear to have been out of character, an aberration.

Normally, actions such as those engaged in by the Claimant warrant a heavy penalty. An employer has a right to maintain discipline; to expect compliance with reasonable work orders which are not arbitrary or capricious, or which do not place the employee in physical danger. Likewise, foremen in the exercise of their supervisory duties, properly and appropriately administered, should not be subject to verbal or physical abuse. However, discharge for a first offense in this case is, in our view, too drastic in light of the Claimant's 30 years of service, his work proficiency, and the absence of any prior record of disciplinary actions.

It is well established in labor arbitration that in assessing the propriety of any disciplinary penalty, an employee's past record must be given considerable weight. An employee's past service record, in disciplinary proceedings, is normally considered in determining the appropriateness of discipline imposed.

The Claimant's long record with the Carrier, unmarred by any previous warnings, reprimands or discipline, suggest some moderation of the discharge penalty. In view of these mitigating circumstances, we are of the opinion that the Claimant has been sufficiently disciplined for his conduct and that, therefore, the Claimant's discharge should be reduced to a disciplinary layoff, as set forth below.

The period since the Claimant's discharge shall be deemed a disciplinary suspension and constitute a warning to the Claimant that a recurrence of unsatisfactory conduct will be viewed with the utmost gravity and severity. In effect, Claimant is being given another chance under the circumstances disclosed by the record and his past service record.

The penalty assessed here is based exclusively on consideration of all the facts in this case, and shall not serve as a precedent in any other case.

A W A R D

That the Claimant, O. E. Knight, be immediately reinstated in the service of the Carrier with seniority rights unimpaired, but with no compensation for the time he has been out of service.

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 14th day of October, 1977.