

The Second Division consisted of the regular members and in addition Referee James C. McBrearty when award was rendered.

Parties to Dispute: (System Federation No. 6, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Elgin, Joliet and Eastern Railway Company

Dispute: Claim of Employees:

1. That the Elgin, Joliet & Eastern Railway Company's action in suspending Temporary Carman W. H. Lindsey for a period of thirty (30) days was unfair, unjust, excessive and in violation of Agreement Rule #35.
2. That, accordingly, the Elgin, Joliet & Eastern Railway Company be ordered to compensate W. H. Lindsey for eight (8) hours pro rata rate for each of the thirty days he was suspended.

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.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the Carrier's action with respect thereto was discriminatory, unjust, unreasonable, capricious or arbitrary, so as to constitute an abuse of that discretion.

The record before us indicates that Claimant threw his gloves at another Temporary Carman, and shortly thereafter struck his fellow Carman in the mouth, in the course of a heated argument. Although Claimant argues that he was merely defending himself, the record clearly shows the other Temporary Carman never struck Claimant.

A railroad yard is a place for the movement of trains and the performance of work. While it is not a tearoom, neither is it a place for barroom conduct. Childish, uncontrolled, or irresponsible outbursts accompanied by physical or verbal assault cannot be tolerated. Such behavior is not excusable because the offender is in an agitated emotional state. Moreover, verbal abuse is rarely considered justifiable provocation for a physical response.

Therefore, the degree of discipline assessed is fully justified in view of the severity of the offense. Consequently, we must 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 9th day of December, 1977.