Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7450
SECOND DIVISION Docket No. 7427
2-SLSF-MA-'78

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: International Association of Machinists and Aerospace Workers

St. Louis-San Francisco Railway Company

Dispute: Claim of Employes:

1. That the St. Louis - San Francisco Railway Company unjustly suspended Machinist R. W. Crain from service beginning July 11, 1976, and subsequently dismissed him from service on August 2, 1976 for an alleged altercation between himself and upgraded Machinist Apprentice Ollie Williams, on July 11, 1976.

2. That accordingly, the St. Louis - San Francisco Railway Company be ordered to compensate Machinist R. W. Crain at the pro rata rate of pay for each work day beginning July 11, 1976 until he is reinstated to service. In addition, he shall receive all benefits accruing to any other employee in active service, including vacation rights and seniority unimpaired.

3. Claim is also made for Machinist R. W. Crain's actual loss of payment of insurance on his dependents and hospital benefits for himself, and that he be made whole for pension benefits, including Railroad Retirement and Unemployment Insurance.

4. In addition to the money claimed herein, the St. Louis - San Francisco Railway Company shall pay Machinist R. W. Crain an additional sum of 6% per annum, compounded annually on the anniversary date of said claim, in addition to any other wages earned elsewhere in order that he be made whole.

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 Machinist R. W. Crain, was suspended from service on July 11, 1976, and, after an investigative hearing, was dismissed from service on August 2, 1976 for violation of Rules A and B, which read in part:

> Rule A: "Employes must not enter into altercations with any person, no matter what provocation may be given, but will make note of the facts and report to their immediate supervisor."
>
> Rule B: "Employes who are quarrelsome or otherwise vicious will not be retained in the service."

The Organization objected to the hearing procedure in that the hearing officer issued the letter of charges and also imposed the penalty.

As indicated in many previous awards, most recently Award No. 7449, this is not in itself prejudicial to a fair and impartial hearing. In the present instance, the Board finds no fault with the hearing procedure, which included giving the Claimant himself the opportunity to question witnesses.

The Board finds no basis to substitute its judgment for that of the Carrier in its decision to dismiss the Claimant from service. The record shows that the Claimant was provoked by unacceptable language directed at him by a fellow employe. Nevertheless, the Claimant was found to have made threats against the other employe which had to be taken seriously. As such, they were a clear violation of the rules and made his continued employment unacceptable. Award No. 6084 (McGovern), among others, makes a similar holding. If the incident had stood entirely alone, there might have been call for considering some lesser penalty. In this instance, however, the Claimant had been restored to service by the Carrier only two months earlier on a leniency basis following a similar type of offense. This puts the Carrier's actions beyond any consideration of modification.

The Organization also objected to the Claimant being suspended immediately without awaiting the results of an investigative hearing. In the presence of the serious threats made by the Claimant, the Board finds that the Carrier's representative acted in an entirely reasonable manner.

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 January, 1978.