

The Second Division consisted of the regular members and in addition Referee Ralph W. Yarborough when award was rendered.

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

Dispute: Claim of Employees:

1. That as a result of an investigation held on February 10, 1976 Mr. Richard Scheidt was advised that he was dismissed from the service of the Elgin, Joliet & Eastern Railway Company on February 23, 1976. Said dismissal is arbitrary, unjust and excessive and in violation of Agreement Rule #35.
2. That the Elgin, Joliet & Eastern Railway Company, hereinafter referred to as the Carrier, be ordered to reinstate Mr. Richard Scheidt, hereinafter referred to as Claimant, with seniority, vacation and all other rights unimpaired and pay for all time lost until said reinstatement is effected.

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 waived right of appearance at hearing thereon.

Carrier's charges upon which the investigation of Claimant was held alleged that: (1) on February 5, 1976 Claimant was under the influence of intoxicants on company property between 8:05 a.m. and 9:30 a.m.; (2), tried to provoke a fight with Mr. Phillip Stofko at approximately 8:15 a.m. in an area of the Steel Car Shop room; (3), kicked Mr. David Schmidt with his foot at 9:05 a.m. in the area of Track K-5; (4), threw a piece of metal and threatened Mr. Allen Barrett with bodily harm at 9:10 a.m.; (5), insubordination for failure to follow instructions of the Assistant General Foreman - Car Shop - Lopez at 9:30 a.m. (to get off the Carrier's property and stay off).

Petitioner vigorously attacks the investigation on the basis that a fair hearing was not held, because the General Foreman made the charges, conducted the investigation, and handed down the decision.

The charges were so overwhelmingly proven that the detail of which officer of the Carrier held the hearing becomes of relatively little importance.

All of these charges, except No. 2, attempted to provoke a fight with Mr. Phillip Stofko (Claimant contended that it was an effort at "horseplay"), were proven by Carrier by a compelling preponderance of the evidence. At the hearing held on February 10, 1976, Investigation Officer Loveless, when Claimant Scheidt was questioned about these charges, Claimant Scheidt's answers were as follows:

"Loveless: You have heard Mr. Lopez and Mr. Vodacek state that they smelled alcohol on your breath on the morning of February 5, 1976. Had you been drinking prior to coming to work?

Scheidt: No comment.

Loveless: Mr. Scheidt, did you try to provoke a fight with Mr. Phillip Stofko at approximately 8:15 in the tool room of the Steel Car Shop?

Scheidt: No comment.

Loveless: Mr. Scheidt, did you kick Mr. David Schmidt on his right leg on K-t, in the Steel Car Shop on February 5, 1976?

Scheidt: No comment.

Loveless: Mr. Scheidt, did you throw a piece of metal at Mr. Allan Barrett and threaten him with bodily harm at approximately 9:10 a.m. on the stripping track at the Steel Car Shop on February 5, 1976?

Scheidt: No comment.

Loveless: Mr. Scheidt, did you fail to follow instructions issued to you by Assistant General Foreman Car Shop, Mr. Lopez, at approximately 9:30 a.m. in the area of the Steel Car Shop parking lot when he instructed you not to enter the Steel Car Shop?

Scheidt: No comment."

There being very strong evidence as to the conduct of the Claimant as charged in the instances in question, most of it by multiple witnesses, with the evidence of strong and offensive language in addition by the Claimant, and Claimant's refusing to offer any defense whatsoever that the charges were not true, when Claimant was there at the hearing with his representative vigorously representing him by cross-examining hostile witnesses, Claimant cannot cover up the facts in the case by refusing to answer inquiries.

When the hostile conduct of the Claimant toward fellow workers, as testified to in this case, is involved, a Carrier has a duty to protect those fellow workers from the kind of violence such as was being threatened by Claimant; Carrier had a duty to furnish Claimant's fellow workers a safe place to work. On reading every page of the 275 page record, the writer of this opinion is convinced of the justice of the action taken, and indeed the duty of the Carrier to take this action.

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 15th day of August, 1978.