

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

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
(  
( Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

That under the terms of the Agreement, Machinist J. L. Bellaphant was unjustly suspended from the service of the Louisville and Nashville Railroad Company on the date of May 19, 1976, pending investigation. Investigation was held on June 10, 1976. On July 7, 1976, he was notified that he was dismissed from the service of the Louisville & Nashville Railroad Company.

That accordingly, Machinist Apprentice James L. Bellaphant be restored to service with pay for all time lost, seniority rights, vacation, insurance, and all other rights unimpaired, beginning with his dismissal June 10, 1976 and continuing until the matter is settled.

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.

Following proper notice and investigation, Claimant was dismissed from service of the Carrier on the following charges:

"Refusing to answer roll call on the morning of May 19, 1976, also with being belligerent and disrespectful to Acting Section Manager S. W. Pauze, Department Manager C. J. Pittroff, and Division Manager J.W. Lile, on the morning of May 19, 1976, in refusing to talk to them without Local Chairman being present. Further charged with being loud and belligerent when called to the truck gang office on the morning of May 19, 1976."

Review of the record evidence persuades us that Carrier adduced substantial probative evidence to support its finding that Claimant was guilty as charged. Specifically, he refused to answer roll call on the morning of May 19, 1976, but rather stood silent as his name was called three times by his supervisor. When queried about his silence by successively higher levels of local management Claimant loudly and belligerently stated his refusal to answer any questions absent the presence of his Union representation.

As we view the record, Claimant's proven misconduct was unjustified and unmitigated. Beyond doubt he was insubordinate in refusing to respond or speak in the face of reasonable inquiries about his strange behavior from his duly authorized supervisors. We note that he was not the target of supervisory harrassment nor was he under investigation when he refused to answer or respond to his supervisors. There is no merit in his assertion that he could refuse to obey a reasonable order unless his Union representative was present. Not only did he refuse to obey but his belligerence and truculent disrespect exacerbated the seriousness of his offense. By his actions he made himself vulnerable to dismissal and we can find no basis upon which to reverse Carrier's decision to discharge him.

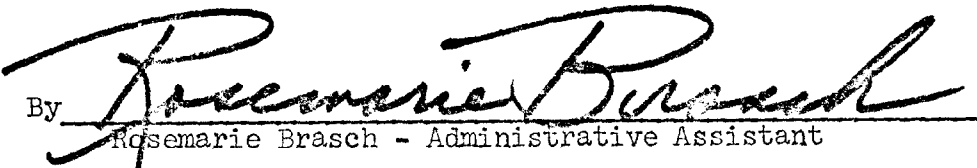
A W A R D

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 7th day of March, 1979.