

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employees'
 (Department, A. F. of L. - C. I. O.
 ((Blacksmiths)
 (Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That, in violation of the current agreements, Welder Helper J. L. Marinacci was unjustly dealt with when on date of July 29, 1977, was assessed a dismissal from service of the Carrier.
2. That, accordingly, the Carrier be ordered to return Mr. Marinacci to service immediately with:
 - (a) All seniority rights unimpaired.
 - (b) Compensation for all lost time at the prevailing rate of pay, plus 6% per day until date of payment.
 - (c) Make him whole for all vacation rights.
 - (d) Pay all premiums for hospital, surgical, medical and dental benefits for all time held out of service.
 - (e) Pay the premiums for group life insurance for all time held out of service.
 - (f) Be allowed all other benefits that he would have been entitled to had he not been removed from service.
 - (g) Remove the discipline from the 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.

This Board has carefully reviewed the detailed investigative transcripts and supporting documentary submissions to determine whether or not Claimant's dismissal on July 29, 1977, following two (2) separate, albeit related investigative hearings on July 21 and 28, respectively, was consistent with Agreement procedures and appropriate due process standards.

We well nigh recognize the serious implications and operational problems attendant to presumptive on site narcotics usage and accordingly commend Carrier's security personnel for their consummate investigative diligence, but we do not find in the voluminous record that quantum degree of evidence necessary to sustain this dismissal finding.

Instead, we find in the record on the key or critical situational developments, inconsistent and contradictory statements and affirmations that fall short of the strict evidentiary requirements of this Board.

This is particularly so regarding the allegation that Claimant threatened bodily harm to the Carrier's witness scheduled to testify in the July 21, 1977 Rule G investigative hearing.

There may well have been an implicit threat when Claimant and others entered the Benlo Depot on the morning of July 14, 1977 or afterwards, when Claimant alone, spoke to the witness's father but we do not have compelling proof that Claimant actually and unmistakably threatened the witness.

Perhaps the father could have provided the requisite confirmatory evidence to affirm the specification, but he was not called as a witness.

His son, moreover, testified that Claimant never directly threatened him.

While it is possible to read all sorts of cause-effect relationships in particular behavioral relationships, the results of necessity, must conform to this Board's high adjudicatory proof standards.

Carrier was correct in promptly responding to the asserted charges of witness intimidation and its position was vigorously presented, but we have no concrete evidence that Claimant threatened the witness.

We will thus sustain the claim and order Claimant reinstated with back pay and seniority rights unimpaired and further direct that this incident be removed from the record.

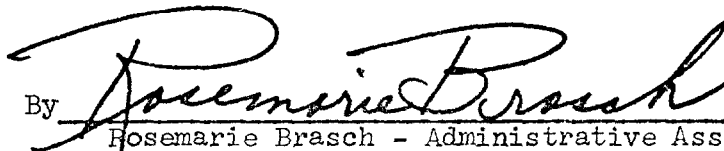
A W A R D

Claim sustained to the extent expressed herein.

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 28th day of March, 1979.