

Rule 802:

"Boisterous, profane or vulgar language is forbidden."

The specific charge in the notice of investigation was that Claimant was insubordinate, quarrelsome or otherwise vicious, boisterous, and used profane and vulgar language on April 28, 1977, under the following circumstances:

Claimant received a personal telephone call which he took in the relief supervisor's office. The relief supervisor walked by the office and noticed Claimant "sitting in a reclining type position leaning back in the chair as far as he could with his feet about eye level on the desk. And I went around and I asked him if he would remove his feet from the desk and he told me to get the *** out of the office, that I had no business in there and who the hell did I think I was and few other words".

The relief supervisor thereupon called the General Foreman. When the General Foreman entered the office, Claimant jumped up, extended the telephone towards the General Foreman, and in language similar to that addressed to the relief supervisor, told the General Foreman to get out of the office. At that point, the General Foreman went to his own office, called company Special Agents and Claimant's immediate supervisor. The latter went to Claimant's work area, where he found Claimant working on the deck of a locomotive and asked him to come down. Claimant responded that he did not have to talk to anyone and that "if you want to talk to me come on up here". After several requests, Claimant finally complied with his supervisor's instruction to come off the locomotive. He was then escorted off the property.

Claimant testified that the telephone call was an emergency call and that he was distraught and upset. However, his immediate supervisor, who informed him of the telephone call, testified that the caller did not state that it was an emergency call.

Carrier asserts that Claimant's posture and relaxed bearing while he was talking on the telephone belie his contention that the call was of an emergency nature.

Claimant's supervisor testified that he was about 8 feet away from Claimant and the General Foreman, that he heard the conversation, including the vulgar language, and that Claimant's behavior to the supervisors was "aggressive".

Claimant acknowledged that he was familiar with the General Rules and Regulations. His language went beyond the limits of shop talk. In essence, he ordered the relief supervisor and the General Foreman out of an office assigned to supervisory personnel. His manner was hostile and threatening. Not until after he was requested at least three times by his immediate

supervisor did he step down from the locomotive on which he was working after the incident in the office, so that the General Foreman could talk to him.

On the basis of the record and the transcript of the investigation, we are of the opinion that the evidence supports a finding that Claimant's behavior and language were in violation of Rules 801 and 802 and that the company's action in dismissing him was proper. Accordingly, we will deny the claim.

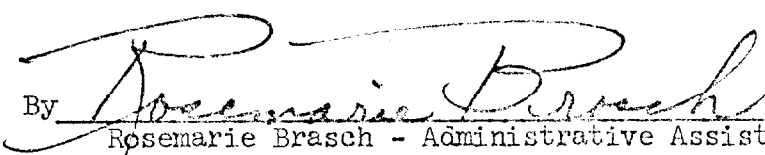
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of September, 1979.

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 114, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Boilermakers)
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That the Southern Pacific Transportation Company dealt unjustly and capricious with Boilermaker David Fann, Jr., when removing him from service on April 28, 1977, and discharging him from service on June 21, 1977. That accordingly, the Southern Pacific Transportation Company be ordered to make Boilermaker David Fann, Jr., whole by;
- (2) Restoring him to service with all seniority rights, vacation rights, holidays, sick leave benefits and all other rights that are a condition of employment, unimpaired and compensation for all lost time, plus 6% annual interest on all such lost wages. Also reimbursement for all losses sustained on account of loss of coverage under health and welfare and life insurance agreements during the interim he is held out of service.

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.

Claimant was dismissed, following formal investigation, on the grounds that he had violated Rules 801 and 802 of the Carrier's General Rules and Regulations, which read:

Rule 801:

"Employees will not be retained in service who are insubordinate, quarrelsome or otherwise vicious. Any act of hostility is sufficient cause for dismissal."