

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

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

Dispute: Claim of Employees:

1. Under the current controlling Agreement, Mr. H. Abdur-Rahman, Hostler Helper, Chicago, Illinois, was unfairly dealt with when suspended from service of the Chicago and Northwestern Transportation Company, effective February 4, 1978.
2. That, accordingly, the Chicago and Northwestern Transportation Company, be ordered to reinstate Mr. H. Abdur-Rahman to service with seniority rights unimpaired, compensate for all time lost including fringe benefits, and remove the mark from his personal 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.

Claimant, a Hostler Helper in carrier's Proviso Diesel Shops in Chicago, Illinois, was discharged from service on February 4, 1978, for failure to protect assignment, addressing abusive language to the foreman, and being absent without authority.

The organization contends that carrier dealt unjustly with claimant and that discharge should not be sustained. As review of the record before this Board reveals that claimant was, in fact, late for work on the day in question. It is also clear that he did use abusive language toward his foreman. Statements made by claimant to his foreman cannot, by any standard, be considered shop talk, as the organization claims. Testimony of foreman Vaca at the investigation into the charges against claimant weigh heavily against the shop talk theory. The record reveals that claimant did use excessively abusive language. His statements to the foreman do constitute

verbal threats. Under such circumstances, a carrier has legitimate cause to discipline a claimant. Only the severity of the penalty remains to be considered by this Board.

A review of claimant's work record, as outlined in carrier's submission, indicates that claimant is an employee who has not, since his employment in 1974, been able to comply with rules and regulations of the railroad or learn from his previous encounters with discipline.

Since 1974, he has been reprimanded, suspended from service, and discharged for time and attendance infractions. He was reinstated without pay after ten months, subsequent to his first discharge. He was suspended for 30 days for failure to comply with instructions. In the present instance, carrier has done everything possible to impress upon claimant the fact that he should change his behavior and become a worthwhile employee. Claimant has not responded to carrier's efforts. Claimant's work record shows no indication that he has learned by his past mistakes. The record of this case shows no indication that he will change his behavior in the future. No employer should be required by any arbitrator or arbitration tribunal to continue a worker with such a record in its employ.

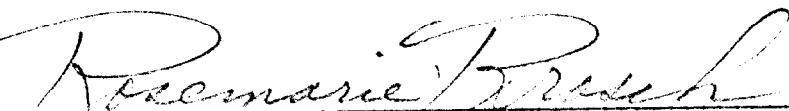
A W A R D

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 October, 1979.