

The Second Division consisted of the regular members and in addition Referee Wesley A. Wildman when award was rendered.

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

Dispute: Claim of Employee:

1. That under the current Agreement, Carman R. J. Pulley was unjustly deprived of his service rights and compensation when he was improperly dismissed from service on August 12, 1977 after three years' service with the Carrier, as a result of investigation held on August 4, 1977.
2. That accordingly, the Southern Pacific Transportation Company be ordered to reinstate Carman R. J. Pulley to service at Sacramento, California in accordance with the provisions of Rule 39, and that he be made whole for all vacation rights, pension benefits including Railroad Retirement and Unemployment Insurance, and any other benefits he would have earned during the time 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 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.

On August 12, 1977, Carman R. J. Pulley was notified, by letter, of his dismissal from service for violation of Rule 801 and 802 of Carrier's General Rules and Regulations interdicting behavior which is "quarrelsome or otherwise vicious", and forbidding "altercations" while on duty.

The letter of dismissal followed an investigation by Carrier which had been preceded by proper notice to Claimant to appear at a hearing to defend against charges of violating the above-mentioned Rules.

At the beginning of the hearing, Claimant stated that he had been duly notified of the charges, that he understood Rules 801 and 802, that his chosen representatives and witnesses were present, and that he was prepared to proceed with the investigation. At the close of the hearing, however, Claimant stated that, in his estimation, the hearing had not been fair since, 1), he was the

only one who had been charged with violation of the rules, though other employees were involved in the incident, and, 2), most of the Carrier's witnesses had lied.

Claimant now appeals his dismissal on the grounds that, 1), he was not the initiator or perpetrator of the employee altercation which is the subject of this case, but was acting in self-defense and, 2), even though he had been involved in the incident, Carrier's dismissal action was arbitrary and capricious in that it constituted punishment rather than an attempt at remediation.

The record discloses that while three men were involved in an argument in which vulgarities and provocative language were exchanged, there is clearly substantial evidence to support Carrier's allegation that Claimant did indeed take the initiative in perpetrating an act of violence. By his own testimony, Claimant acknowledges that he kicked a bucket in the freight car where his adversary, one Fenner, was sitting. The bucket cut Fenner's leg and when he (Fenner) tried to rise, Claimant hit him in the face. This action does not appear to this Board, on the record before it, to have been an act of self-defense, irrespective of whether or not Claimant intended harm to Fenner when he initially propelled the bucket.

Finally, it is the judgment of the Board that Carrier was acting within the proper bounds of its appropriate discretion when it imposed dismissal for the behavior of Claimant discussed above; there is no basis for holding that the penalty is arbitrary, capricious, or excessive.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 11th day of June, 1980.