

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: { International Association of Machinists and
Aerospace Workers
Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That Machinist Craig M. Denton was improperly removed from service on July 2, 1978, and subsequently, unjustly dismissed from service on July 19, 1978.
2. That Machinist Craig M. Denton be returned to the service of the Carrier with seniority unimpaired and be made whole for all wages lost, and for any and all wages lost, and for any and all benefit losses incurred in accordance with Controlling Agreement J-1-(e) and existing law, if any.

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 was discharged from service as a result of an incident which occurred on July 2, 1978, on Carrier's property. Cause for said discharge was initially cited as "insubordination in that you were told to perform your duties ... and failed to do so, and also allegedly used abusive language ... (and) ... further allegedly threatened Foreman ... with physical violence ..."

Carrier contends that sufficient evidence was adduced at hearing to support its position. Further, Carrier contends that Claimant's Organization's July 25, 1978, correspondence is an acquiescence of Claimant's guilt herein. Lastly, Carrier maintains that Claimant's actions relative to this discharge incident coupled with his relatively short tenure as employee of Carrier demonstrate him to be unfit for further employment with said Carrier.

Claimant maintains that he did not use abusive language toward his supervisor nor did he threaten supervisor with bodily harm. Also Claimant disputes Carrier's allegation that his actions were insubordinate in that the

Claimant did not receive any direct order from his supervisor. Additionally, Claimant's Organization argues that Carrier's failure to include charge of "threatening of bodily harm" in final statement of charges constitutes abandonment of this particular charge by Carrier.

This Board is respectfully cognizant of the appellate nature of its jurisdiction in discharge cases, and as such, the Board acknowledges that its function is confined to determining whether: (1) Claimant was afforded a fair and impartial hearing; (2) the finding of guilty as charged is supported by substantial evidence; and (3) the discipline imposed is reasonable (See: Third Division Awards 13179 and 16444).

Upon a careful review of the complete record herein, however, this Board is not persuaded that the Carrier has produced any degree of substantial evidence which would approach the "sufficiency of evidence requirement" indicated above. Though it does appear that such evidence was known by the Carrier and could have been produced, this evidence was not made a part of the Carrier's presentation; and since this Board is limited in its deliberations to the record which is presented to it, this Board has no alternative but to affirm the claim as presented and to direct that the Claimant be made whole as per his request and in accordance with the provisions of the parties' controlling agreement.

A W A R D

Claimant shall be made whole in accordance with the above Findings.

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.