

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen & Oilers  
{  
{ Washington Terminal Company

Dispute: Claim of Employees:

1. That in violation of the current agreement, W. Felder, Laborer was unjustly suspended and dismissed from service of the Carrier following hearing held on date of February 16, 1979.
2. That accordingly the Carrier be ordered to make the aforementioned W. Fleder, Jr., whole by restoring him to Carrier's service with seniority rights unimpaired, plus restoration of all holiday, vacation, health and welfare benefits, pass privileges and all other rights, benefits and/or privileges that he is entitled to under rules, agreements, custom or law, and compensated for all lost wages plus interest.

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 subject to an investigative hearing on the following charge:

"Violation of Washington Terminal Company General Rules 'N', 'Employes ... must conduct themselves at all times, whether on or off Company property, in such a manner as not to bring discredit upon the Company. Participating in any unauthorized or unnecessary activity while on duty or while on Company property is prohibited.' When at approximately 8:15 a.m. on February 9, 1979 you did threaten your supervisor, Engine-house Foreman M. R. Farr, Jr., when you threatened him with bodily harm after being disciplined as a result of a Hearing afforded you on February 5, 1979, when you stated to Mr. Farr, 'I will put something between your lights' and at this same time you pointed your finger to Mr. Farr's head."

General Rule "N", of which a portion is quoted above, reads in full as follows:

"Employees must be of good moral character and must conduct themselves at all time, whether on or off Company property, in such manner as not to bring discredit upon the Company.

Stealing, falsifying reports, being insubordinate, engaging in altercations, gambling, playing games, participating in any illegal, dishonest, or immoral activity, while on duty or while on Company property, is prohibited.

Participating in any unauthorized or unnecessary activity, while on duty or while on Company property, is prohibited.

Employees are prohibited from entering cars except in the in the performance of their duty. Loitering in cars is prohibited."

The Organization argues that the charge against the Claimant was not sufficiently precise to meet the requirements of Rule 32, pointing to the indefinite nature of the excerpt from Rule "N". The charge, however, goes on to provide specific details concerning the incident in which the Claimant is alleged to be involved. The Board finds that the charge meets the requirements of Rule 32 and that the hearing was conducted in a fair and proper manner.

The supervisor involved, served as Acting General Foreman for the day, testified that the Claimant came into his closed office and used the words indicated in the charge. The claimant, on the other hand, testified that he came into the office to empty the trash basket and said nothing whatsoever to the supervisor. Some doubt is cast on this version initially in that the Local Chairman indicated, in questioning the supervisor during the investigative hearing, that the Claimant had indicated to him that he had gone into the office to discuss a previous disciplinary matter with the supervisor.

The Board can find no basis to question the testimony of the supervisor. No motivation was shown for him to make up the incident out of whole cloth. The statement attributed to the Claimant can only be understood as a threat of bodily harm. The Claimant's testimony that his purpose in entering the office was to empty the trash basket is not supported by evidence that he was actually prepared to do the task.

In assessing the penalty, the Carrier properly reviewed the Claimant's past record, which shows progressively more severe disciplinary suspensions for offenses involving personal misconduct. Based on the testimony in the hearing and the Claimant's past record, the Board finds that the penalty of dismissal was reasonable.


A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: Executive Secretary  
National Railroad Adjustment Board

By

  
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Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 1st day of October, 1980.