

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

Parties to Dispute: { Brotherhood of Railway Carmen of the United States and Canada  
{ Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That under the controlling agreement Carman Welder John W. Bowers was unjustly removed from service by the Missouri-Kansas-Texas Railroad Company, Denison, Texas, on November 28, 1978, and following investigation held on December 11, 1978, was dismissed from service on December 13, 1978.
2. That accordingly, the Missouri-Kansas-Texas Railroad Company be ordered to restore Carman Welder Bowers to service with pay for all time lost and any other benefits he would have been entitled to beginning November 28, 1978.

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.

Carman Welder John W. Bowers, claimant, was dismissed from carrier's service on December 13, 1978, for intentionally thrusting a lighted burning torch at a fellow employe who was verbally harrassing him. Carrier properly served charges on claimant, citing a violation of circular No. DD-2, carried out a proper hearing reviewed the results of that hearing, found claimant to be guilty as charged, and dismissed him.

A review of the record of this case developed on the property and submitted to this Board reveals that carrier has acted in accordance with the schedule agreement and that its decision to dismiss claimant for his action is justified. While the members of this board are mindful of the fact that confrontations between employees do occur and this board has, on occasion, considered provocation as a mitigating circumstances, we have consistently maintained that an action by one employe that places his or another worker's safety in jeopardy is unexcusable and need not be tolerated by carrier, nor by his fellow employes.

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 8th day of October, 1980.