

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: { International Brotherhood of Boilermakers, Iron Ship  
Builders, Blacksmiths, Forgers and Helpers  
{  
{ Southern Pacific Transportation Company

Dispute: Claim of Employees:

That under the current controlling Agreement, Boilermaker E. Mendoza, was unjustly suspended from service of the Southern Pacific Transportation Company on August 4, 1978 and was unjustly dismissed from service on August 22, 1978. That accordingly, the Southern Pacific Transportation Company make Boilermaker E. Mendoza whole by;

1. Restoring Boilermaker Mendoza to service with seniority rights, vacation rights, holidays, sick leave benefits and all other benefits that are a condition of employment, unimpaired and compensation for all time lost.
2. In addition to money amounts claimed herein, the Carrier shall pay Claimant an additional amount of 6% per annum.
3. Reimbursement for all losses sustained on account of loss of coverage under Health & Welfare and Life Insurance Agreements during the time Claimant is 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 employee or employees involved in this dispute are respectively carrier and employee 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.

At the time of dismissal, the claimant was employed as a Boilermaker with a seniority date of September 22, 1966.

On August 8, 1978, claimant was directed to report for a formal hearing to be held on August 14, 1978, on the charges of violating rules 801 and 802. These rules read as follows:

Rule 801:

"Any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company is sufficient cause for dismissal and must be reported."

Rule 802:

"Courteous deportment is required of all employees in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden."

The charges were made in connection with a quite vulgar and profane sexual remark directed personally toward a female Boilermaker Apprentice. The claimant was found guilty and dismissed on August 22, 1978.

The incident occurred on August 4, 1978. The claimant was observed by a foreman in a corner of the shop talking to another employee. He was instructed several times by the foreman to return to his work area. Upon leaving the area, the claimant then allegedly turned to the female apprentice and made the vulgar comment. The exact comment was vulgar to such an extent that it is inappropriate and unnecessary to repeat it here, although it has been made part of the record for evidentiary purposes. It is also alleged that the comment was repeated toward the foreman.

In reviewing the record, it is the conclusion of the Board that there is substantial evidence to support the charge. The evidence includes two eye witnesses. Foreman R. J. McKenzie testified that he heard Mr. Mendoza direct the comment toward the apprentice and toward himself. The apprentice also testified regarding Mr. Mendoza's comments. This testimony collaborated McKenzie's. The claimant denies having made the comment arguing his words were misunderstood.

It is not our function to resolve conflicts in evidence or to assess credibility. Our function is to determine if the hearing officer at the hearing resolved the conflict on the basis of substantial evidence. There is in fact substantial evidence to support the hearing officer's resolution of conflicts and his assessment of credibility.

The organization also argues even if the claimant did make the comment his words were just "shop talk". However, the sexual, personal and anatomical nature of the comment go far beyond normal curses heard in industrial settings.

Employee behavior towards females in a predominately male industrial setting is a valid concern of any company, particularly when it is noted companies are under an increasing obligation to provide work environments free from this and other forms of sexual harassment.

Regarding the quantum of discipline, the Board notes in the record that it was agreed March 6, 1979, on the property to reinstate the claimant without backpay without prejudice to a claim for back pay. Essentially the claim is an appeal of a seven-month suspension.

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In consideration of the claimant's past record and the seriousness of the offense, it cannot be said that a seven-month suspension is arbitrary or capricious.

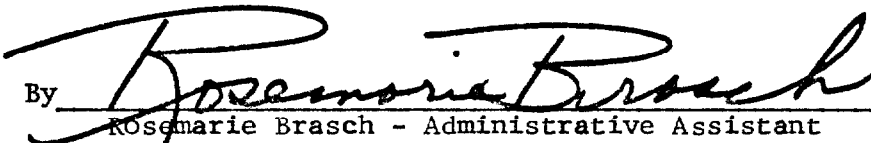
A W A R D

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 3rd day of December, 1980.