

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (International Brotherhood of Firemen & Oilers
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(Soo Line Railroad Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer Mark O'Rourke, Minneapolis, Minnesota, was unfairly dismissed from service of the Soo Line Railroad Company, effective December 13, 1978.
2. That, accordingly the Soo Line Railroad Company be ordered to make Mr. Mark O'Rourke whole by restoring him to service with seniority rights, vacation rights and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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, a laborer at the Carrier's Shoreham Diesel facility in Minneapolis, Minnesota, was discharged on December 13, 1978 for committing vandalism on November 18, 1978.

The organization contends that the claimant was denied a fair hearing because the Manager of Shops engaged in multiple roles contrary to the applicable agreement by serving the notice of charge, assessing the discipline and denying the initial appeal. Further, the organization asserts the claimant, when he was throwing fluorescent light bulbs to a fellow employe, never intended to cause the destruction of company property but only engaged in harmless horseplay. The carrier urges us to sustain the discipline because the record discloses substantial evidence (including two eyewitnesses) to show the claimant deliberately destroyed at least four fluorescent light bulbs and one high watt mogul base bulb. Vandalism, according to the carrier, is an offense of such serious magnitude that dismissal is the proper penalty.

A perusal of the record demonstrates the claimant was accorded a fair and impartial hearing. The manager of shops did not engage in multiple roles, since he only assessed the discipline at the direction of the Chief Mechanical Officer who had reviewed the hearing transcript.

There is some conflict in the record regarding the placement of the light bulbs before claimant started throwing them. It is not the function of this Board to resolve credibility disputes but, suffice to say in this case, the conflicting testimony is immaterial. Regardless of whether the bulbs were securely in their fixtures or merely laying around the shop, the claimant knew that throwing fragile light bulbs was substantially certain to result in damage to company property. Claimant's fellow employee conceded they were tossing the bulbs around "like a football". Claimant acted in reckless disregard of the preservation of carrier property. The claimant's reprehensible conduct constituted more than mere horseplay and, thus, there is substantial evidence in the record to support the charge of vandalism.

Upon a careful scrutiny of the entire record, we conclude that a penalty of dismissal is excessive. Claimant's separation from service since December 13, 1978 should impress upon the claimant the wrongfulness of his actions. We rule the claimant should be reinstated with seniority unimpaired but without back pay and the other benefits requested by the claimant. However, the claimant should be acutely aware that this Board does not tolerate playing with company equipment. Upon his return to work, the claimant should perform his duties in an exemplary fashion. Future infractions will not be looked on with favor by this Board.

A W A R D

Claim sustained but only to the extent consistent with our findings.

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.