Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 8566
Docket No. 8546
2-C&NW-FO-'81

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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(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. Under the current controlling agreement, Mr. Joseph Hill, Jr., Laborer, Proviso Diesel Shops, Chicago, Illinois was unjustly dealt with when dismissed from service of the Chicago and Northwestern Transportation Company, effective December 4, 1978.

2. That, accordingly, the Chicago and Northwestern Transportation Company be ordered to reinstate Mr. Joseph Hill, Jr., 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.

On November 16, 1978, claimant, a laborer in carrier's Proviso Diesel Shops, was suspended from service pending an investigation which was held on November [illegible]. The carrier charged claimant with insubordination and threatening his foreman. As a result of the investigation, the carrier dismissed claimant on December 4, 1978. The sole issue presented for our review is whether or not the carrier satisfied its burden of proof by presenting substantial evidence to support the charges.

The claimant reported to work late on November 16, 1978. When the foreman told the claimant to clean up the floors, the claimant, demanded that he be assigned his regular duties as a hostler helper. The foreman replied that his normal job was filled for the day with a replacement due to the claimant's tardiness. Later, claimant asserted he was ill and going home. The foreman gave his permission to go

home, but before doing so, the claimant verbally assaulted his foreman and, according to the foreman and a brakeman, the claimant threatened his foreman with a closed knife. The claimant denies the knife incident but admits that he demanded that he be permitted to work as a hostler helper for the balance of the shift.

There is no doubt, from the record, that the foreman instructed the claimant to clean up the floors and that the claimant refused to follow the instruction ostensibly because he was entitled to work his usual job. Unless the foreman's order was patently unreasonable, the claimant had an obligation to obey. If the claimant believed the foreman erred in denying him his usual job, the claimant's remedy was to follow the foreman's directive and then bring a grievance. In this instance, the foreman's order was reasonable since the claimant was late and his job had been awarded to a replacement for the day. See Second Division Award No. 7946 (Marx) and Second Division Award No. 8045 (Lieberman). The order was reasonable under the circumstances and the claimant committed insubordination when he failed to obey the order.

There is an issue of credibility surrounding the knife incident. This Board is restricted to searching the record for substantial evidence and we cannot resolve conflicts in testimony. Here, a disinterested witness (a brakeman) testified he observed the claimant threatening his foreman with an unopened knife. Thus, the hearing officer could legitimately conclude that the foreman's version of the events, corroborated by an unbiased witness, was closer to the truth than the claimant's self serving denials. Therefore, the carrier presented substantial evidence supporting the charge that the claimant threatened his foreman. While the claimant may have had an unsatisfactory relationship with this foreman that is no excuse for the claimant to resort to threats of physical violence against his foreman. Second Division Award No. 8079 (Scearce).

Because the carrier proved that the claimant committed both of the charged offenses we see no reason to reverse the carrier's assessment of discipline. The offenses were serious and the claimant's conduct was so outrageous that dismissal is the proper penalty.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of January, 1981.