

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

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

Dispute: Claim of Employees:

That under the current controlling Agreement, Boilermaker David Rasmussen was unjustly dealt with when the Southern Pacific Transportation Company suspended him from service on September 13, 1978 and dismissed him from Carrier service on October 19, 1978. That accordingly, the Southern Pacific Transportation Company make Boilermaker David Rasmussen whole by;

1. Restoring Boilermaker Rasmussen to Carrier service with seniority rights, vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired and compensated for all lost time, plus 6% annual interest on all such lost wages; also reimbursement for all losses sustained on account of loss of coverage under Health and 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 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 employed by Carrier as a Boilermaker in its Locomotive Heavy Maintenance Plant, Sacramento, California, having entered Carrier's service on July 19, 1971.

On September 13, 1978, Claimant was suspended from service for engaging in an altercation with another employe, also a Boilermaker. On September 14, 1978, claimant was notified to report for a formal hearing:

"... in connection with your alleged carelessness of the safety of yourself and others, being quarrelsome or otherwise vicious, and conducting yourself in a manner which would subject the railroad to criticism on September 13, 1978, which may involve violation of Rule 801 of the General Rules and Regulations, that part reading:

"Rule 801: 'Employes will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism.'

You are entitled to representation in accordance with the provisions of the M. P. & C. Departments' Agreement and may bring to the hearing such witnesses as you desire."

By agreement with the Claimant's representative, the investigation was postponed to October 10, 1978, at which time it was conducted, together with the investigation involving the other Boilermaker with whom claimant engaged in the altercation on September 13, 1979. Following the investigation, Claimant was notified of his dismissal from service on October 19, 1978. During the handling of the dispute on the property, claimant was reinstated to Carrier's service with seniority unimpaired, restricted to light work as a condition before the altercation, without prejudice to further progression of the claim for compensation.

A transcript of the hearing conducted on October 10, 1978, has been made a part of the record. A careful review of the transcript shows that none of claimant's substantive procedural rights was violated. Complaint has been made that the charge against Claimant was not precise. We consider the charge sufficiently precise to enable the claimant and his representative to prepare a defense. It advised the claimant of the conduct complained of, the date, and the rule which may have been violated. Further, a review of the transcript of the hearing shows that the claimant and his representative were well aware of the incident involved, and that there were no surprises. The charge met the requirements of the Agreement.

Complaint has also been made that claimant was not personally advised of the postponement of the hearing from September 22, 1978, to October 10, 1978. As heretofore indicated, the postponement to October 10 was agreed to by the Carrier's Works Manager and the Local Chairman. We find no violation in such handling.

Complaint has also been made that claimant was denied due process when the hearing officer denied claimant's request to use a tape recorder during the hearing for his own personal use. We find no violation in this respect. It was the Carrier's obligation to make a transcript of the investigation and to furnish the employee's representative a copy.

As to the merits of the dispute, there was substantial evidence adduced at the investigation to show that claimant was in violation of Rule 801, quoted in the letter of charge. There was also substantial evidence that claimant was the aggressor in the altercation with the other Boilermaker. Even if verbal provocation on the part of the other Boilermaker is assumed, it did not justify claimant resorting to physical force.

Based upon the entire record, the Board does not find the action of the Carrier in imposing the discipline that was imposed to be arbitrary, capricious or in bad faith. The claim will be denied.

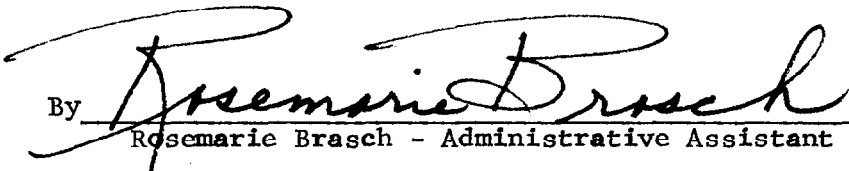
A W A R D

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 25th day of February, 1981.