

The Second Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers  
Consolidated Rail Corporation

Dispute: Claim of Employee:

That, in violation of the current agreement, Firemen & Oiler David Arnold was unjustly dismissed from service of the Carrier on March 1, 1979 for the alleged charges of:

- "1. Conduct unbecoming an employee when you showed disrespect towards an officer of the corporation by writing a letter addressed to W. E. Brooks, Shop Manager, which contained profane, abusive, vulgar, and threatening language, and which you hand delivered to the Shop Manager's Office at approximately 2:25 P.M. while on duty and under pay on January 17, 1979.
- "2. Being out of your assigned work location without proper authority when you came to the Shop Manager's Office at approximately 2:25 P.M. to deliver the above mentioned personal letter to the Shop Manager, while you were on duty and under pay on January 17, 1979."

That, accordingly, the Carrier be ordered to make the aforementioned whole by restoring him to service with pay for time lost, together with all rights and benefits unimpaired.

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 dismissed from service, effective March 1, 1979 following an investigation that was held on February 15, 1979 to determine whether he was guilty of the charges delineated in the February 1, 1979 Notice of Investigation. In particular, he was charged with conduct unbecoming an employee, when he wrote a profane and abusive letter to the Shop Manager, which he personally delivered on January 17, 1979 and for leaving his assigned work location without proper authority, when he tendered the aforesaid letter. Based on the investigative record, most specifically, his admission that he wrote and delivered the letter

and his disciplinary record, which included a recent leniency reinstatement for a prior offense, Carrier concluded that he was unfit for continued employment and dismissed him from service. This disposition was appealed.

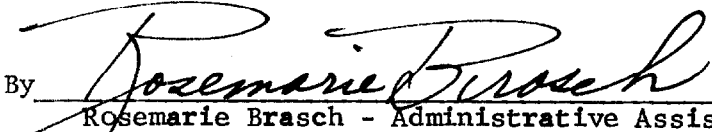
In reviewing this petition, we have carefully considered whether the penalty of dismissal was justified under the circumstances of this incident and Claimant's past disciplinary record. There is no question of credibility, since Claimant acknowledged writing and delivering the disrespectful letter on January 17, 1979 and he impermissibly left his assigned work area. By themselves, they are serious offenses. When we consider also his past disciplinary record, which includes a prior dismissal for insubordination and his subsequent reinstatement on a leniency basis on June 13, 1979, we are judicially constrained to uphold Carrier's decision. The investigation was conducted impartially in accordance with the requirements of administrative due process and the evidence developed at the trial supported the charges. He was previously dismissed for insubordination and then reinstated on the explicit assumption that he would improve his behavior, but he failed to live up to the department standards expected of him. Claimant was fully aware that he would lose his job if he again misbehaved and he acted at his peril when he was blatantly insubordinate toward the Shop Manager on January 17, 1979. The instant penalty was not excessive or an abuse of managerial discretion, when the magnitude of his offense and recedivist history is considered. We will deny the claim.

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 9th day of December, 1981.