

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers  
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company violated the current agreement when Electrician Helper Willie Jennings was unjustly dismissed from service on January 16, 1979 for an alleged altercation.
2. That the Chicago, Milwaukee, St. Paul and Pacific Railroad Company be ordered to make Electrician Helper Willie Jennings whole by reinstating him to service with all seniority and other rights unimpaired and repaying all lost wages and benefits and his record cleared.

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.

Claimant, Mr. W. Jennings, was formerly employed by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company as an overhead crane operator, 3:30 to 12:00 midnight shift, at the Milwaukee Locomotive Shops in Milwaukee, Wisconsin.

On December 12, 1978 Claimant received notice from the Carrier to appear for a formal investigation on December 19, 1978. The purpose of the investigation was to ascertain the facts of an alleged violation by the Claimant of Safety Rule No. 3 of the Safety Rules Governing Employees of the Car Department, Locomotive Department and Material Division, effective January 1, 1974.

Safety Rule No. 3 states:

"Playing practical jokes, scuffling, fighting or wrestling while on duty or on Company property is prohibited."

As a result of the hearing held on December 19, 1978 in the office of Shop Superintendent, Mr. M. J. Nielsen, Milwaukee LD Shop, Claimant was notified on January 16, 1979 that his services were terminated with the Carrier, effective on that date.

Claimant was terminated because he was accused by electrician helper, Mr. S. Sedlar of allegedly threatening the latter verbally and with a knife in Building LD-37 at approximately 5:30 P.M. on Friday, December 8, 1978.

First of all, Claimant has never denied the verbal threat to the effect that he told Mr. Sedlar that "he would cut his head off". Claimant did say, however, that he was only trying to scare Mr. Sedlar. Secondly, the only evidentiary point in dispute is whether Claimant accompanied this verbal threat with a knife. A knife was never found and Claimant on a number of occasions denied that he had one although he did say that "when (he) went up to (Mr. Sedlar) (he) had a nail clipper in (his) pocket (which he) flipped out ..." and that he also picked up "a washer off the table that was shiny" (*ibid.*). On the other hand, Claimant's accuser, as well as co-workers Messrs. T. Opala (electrician helper), M. Robertson (electrician Helper), and W. Tandetzke (chauffeur) have all testified that they saw and heard Claimant threaten Mr. Sedlar verbally and with a knife which Mr. Tandetzke described as similar to "a tar paper knife with a maroon handle".

The Board agrees that it is established that the "burden of proof is on the Carrier in cases of this nature" (First Division Awards 14479, 15410). At the same time, the Board holds that this burden has been met in the instant case by means of "substantial evidence" (See Second Division Awards 7325, 7473, 8023, 8291). It is not the role of the Board, which serves an appellate function, to resolve issues of credibility, nor to substitute its judgement for that of Carriers in discipline cases; its role, as noted above, is to determine if there is substantial evidence to sustain a finding of guilt (See Second Division Awards 7325, 7912, 7955, 7973, 8201).

As an additional point, it is also well established policy of the Board that "Carrier not only has the duty to protect its employees from injury inflicted by one employee on another, but also the right to expect that its employees will not physically harm fellow employees" (Second Division Award 6193; See also Second Division Awards 5681, 5139 and 2191).

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 March, 1982.