

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States
(and Canada
(Southern Railway Company

Dispute: Claim of Employes:

1. That Carman H. A. Scott, Winston-Salem, N. C. was unjustly suspended from service from December 21st through December 30, 1979.
2. That the Carrier be ordered to pay Carman H. A. Scott nine (9) days' pay at his regular rate of pay and eight (8) hours at time and one-half rate, the amount of time lost while suspended from 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 were given due notice of hearing thereon.

Claimant was assessed a nine-day suspension after a formal investigation for having made threats of bodily harm against the Carrier's Yardmaster. The Organization contends that: 1.) the suspension was unwarranted insofar as the Claimant was removed from service without just and sufficient cause and was not proven guilty of the charge; and, 2.) the Carrier imposed an arbitrary exercise of discipline power.

Claimant's duties included the inspection of trains to determine that all mechanical equipment were in safe operating condition. The yardmaster's duties were to see that trains depart the yard on time. The yardmaster had reported to the Carrier's Mechanical Department that it appeared that there was a problem with the car inspection operations. The record indicates that the Claimant took exception to these reports and on two occasions approached the yardmaster and exchanged words.

This Board finds that the Claimant received proper notice of the charges and hearing, that Claimant was fully prepared to go forward at the hearing, and that the Claimant received a full and fair hearing. Furthermore, this Board affirms the finding of fact adduced at the investigation that threats, sufficient in force to place the yardmaster in fear of bodily harm to his person with the apparent

present ability of the maker to actuate those threats, were made by the Claimant. Although the record indicates a slight argument to the contrary, we do not find it persuasive to overturn the finding of fact made at the investigation.

"The precedent is well established that this Board should not substitute its judgment for that of the Carrier in discipline cases where it has produced substantial evidence that the offense charged was committed. While the administration of disciplinary action should not seem haphazard or capricious, it is clear that the imposition of discipline is within managerial discretion." (Second Division Award 6196)

"It must be reiterated here that this Board is not a tribunal of original jurisdiction. Our function, particularly in discipline cases as established by the Railway Labor Act, as amended, is to review the record, ascertain whether the Controlling Agreement had been complied with; the Claimants were afforded due process; there was substantial evidence to sustain a finding of just and sufficient cause for the discipline imposed; and that the action taken by the Carrier was not arbitrary, capricious or unreasonable." (Second Division Award 6368)

No carrier can be expected to run a safe and efficient operation when threats of bodily harm are tolerated, whether those threats be among employes or between employes and management. Therefore, we find that the Carrier, based upon the record, was fully justified in reaching the findings of fact so reached and also in imposing the measure of discipline so determined in this case. It should be pointed out that there are always conflicts among occupations not only in the rail transportation industry, but also all work situations. Threats are not the method of resolving these problems. The controlling agreement clearly states that the Claimant should have filed a grievance and resolved the problem in the established process.

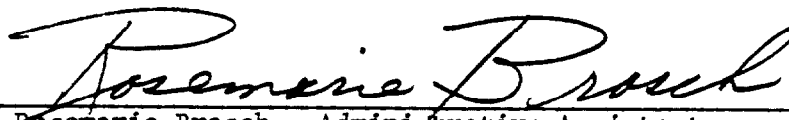
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By



Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of June, 1982.