

The Second Division consisted of the regular members and in addition Referee Goerge V. Boyle when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
{ and Canada
{ St. Louis-San Francisco Railway Company

Dispute: Claim of Employees:

1. That the St. Louis-San Francisco Railway Company violated the controlling Agreement when it improperly and unjustly dismissed Carman Carl Fleming from service on February 13, 1980, and subsequently discharged him from service following formal investigation held on February 29, 1980.
2. That accordingly the St. Louis-San Francisco Railway Company be ordered to return Carl Fleming to service immediately, with pay for all time lost, seniority rights unimpaired, vacation and all other rights 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 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.

The claimant was a 5½ year employe of the Carrier. At the time of his dismissal he was employed as a car inspector at the Capleville Yards in Memphis, Tennessee. He was removed from service for allegedly verbally and physically abusing his foreman.

The Employees, on behalf of the claimant, assert that the carrier erred procedurally by late and improper notification and in not holding a hearing promptly.

They also assert that there is no substantial evidence of wrong doing which would warrant the carrier taking such action with respect to the claimant.

The Board disagrees on both counts. There were no substantial defects in the notification of hearing procedures nor were these issues raised on the property as is required at the time of the hearing (Awards No. 7955, 1402. 1788, 3668, 4035, 6373, 8145 and 8563.)

With regard to the evidence of a dischargeable offense, the hearing officer heard testimony from both the claimant and his foreman which was contradictory.

Based upon this testimony the hearing officer found the foreman's account more credible and took action in accordance therewith.

It has been well established that the reconciliation of directly contradictory testimony and establishment of witness credibility is properly the function of the hearing officer and not the Board who reviews the appeals. Numerous awards might be cited (Nos. 1788, 3676, 5211, 6084, 6195, 6372, 6408, 6489), but it has been said best in Award No. 1809: "The Board is in no position to resolve conflicts in the evidence. The credibility of witnesses and the weight to be given their testimony is for the trier of the facts to determine. If there is evidence of a substantial character in the record which supports the action of the carrier, and it appears that a fair hearing has been accorded the employe charged, a finding of guilt will not be disturbed by this Board, unless some arbitrary action can be established."

In this case there is certainly "evidence of a substantial character". Also, in reviewing claimant's personal work record, the actions reported in the instant case by the foreman are consistent with prior escapades. Moreover the claimant's admission that he had been fired from his previous job for striking a supervisor tends to corroborate the foreman's account.

The representative's citation of his understanding of the "Federal Disclosure Act" is irrelevant and not worthy of consideration as a mitigating circumstance.

Accordingly the claim is denied in its entirety.

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
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of August, 1982.