

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering when award was rendered.

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That in violation of the current Agreement, Laborer Elijah Goodwin, Chicago, Illinois, was unfairly dismissed from service of the Chicago and North Western Transportation Company, effective August 5, 1981.
2. That accordingly, the Carrier be ordered to make Mr. Goodwin whole by restoring him to service with seniority rights, vacation rights, and all other benefits that are a condition of employment, unimpaired, with compensation for all lost time plus 6% annual interest; with reimbursement of all losses sustained account loss of coverage under Health and Welfare and Life Insurance Agreements during the time held out of service; and the mark removed from his record.

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.

Based upon the written complaints of two nurses with regard to Claimant's abusive and demeaning conduct towards them during a routine physical on July 24, 1981, a hearing was called and conducted on the charge of "conduct unbecoming an employe and using vulgar, profane and indecent language at approximately 11:45 a.m., July 24, 1981 in the office of the Carrier's Medical Director."

The Organization alleges that Claimant was denied due process in this investigatory hearing because his representative was not permitted to demand a general recital of the events from the two nurses. The Board finds, however, that due process was not abridged where it was made clear to Claimant's representative that he could ask specific questions about any of the points contained in the written statements which the nurses attested to.

While the Organization is correct that Claimant's language was not shown to be profane, it was vulgar and indecent in the context of his actions. The Board agrees with the Carrier that vulgar and demeaning language and conduct towards employees cannot be condoned. There was no allegation that the nurses in any way provoked Claimant's conduct, nor does his short (9 months) service provide any reason for mitigation. The Board therefore concludes that the seriousness of the infraction and lack of mitigating circumstances justify denial of the claim.

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 4th day of May, 1983.