

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

Parties to Dispute: ( International Brotherhood of Firemen & Oilers  
(  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer William L. Burns was unjustly dismissed from service of the Carrier following trial held on January 13, 1981.
2. That, accordingly, the Carrier be ordered to make the afore-mentioned William L. Burns whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holidays, sick leave benefits, and all other benefits that are a condition of employment unimpaired, and compensated for all lost time plus ten (10%) percent interest annually on all lost wages, also reimbursement for all losses sustained account of coverage under health and welfare and life insurance agreements during the time he has been held out of 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 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.

As a result of an incident which took place on January 3, 1981, the Claimant was held out of service pending trial on the charges of insubordination, use of threatening and abusive language, and threatening to do bodily harm to the Carrier General Foreman.

Following the trial, held on the property on January 13, 1981, the Claimant was found to be guilty of the offenses for which he was charged and was dismissed from service. The record before this Board indicated that the trial on this matter was handled in a fair and proper manner in accordance with the parties' controlling agreement.

There is dispute between the Foreman and the Claimant as to certain aspects of what occurred during the incident and the exact language spoken by the two parties during the incident that resulted in the Claimant's dismissal.

We have reviewed the record in its entirety and have found ample evidence which indicated that the Claimant ignored legitimate orders and used abusive and threatening language.

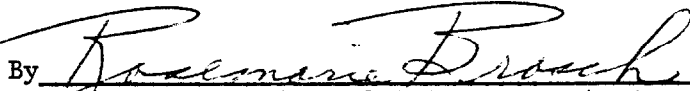
Having thus found, it is not incumbent upon us to substitute our judgment for that of the Carrier nor to reduce the punishment assessed, unless we find it to be arbitrary or capricious. No such finding is made in the matter before us. The claim, therefore, is denied.

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 6th day of July, 1983.