

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

Parties to Dispute: (Sheet Metal Workers' International Association
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. Restore the claimant to service with all seniority rights unimpaired.
2. Compensate claimant for all time lost in addition to an amount of 6% per annum compounded annually on the anniversary date of claim.
3. Make claimant whole for all vacation rights.
4. Reimburse the claimant and/or his dependents for all medical and dental expenses incurred while employee was improperly held out of service.
5. Pay to the claimant's estate whatever benefits the claimant has accrued with regards to life insurance for all time claimant was improperly held out of service.
6. Pay claimant for all contractual holidays.
7. Pay claimant for all jury duty and for all other contractual benefits.
8. Pay claimant for all contractual sick pay.

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 employes 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, L. E. McCauley, received notice dated October 16, 1979 to attend investigation on October 23, 1979. He was charged with violation of that part of Rule 12 of Carrier's Mechanical Department Rules and Regulations which reads, in pertinent part: "Vicious, or uncivil conduct, insubordination ... will subject the offender to summary dismissal". Claimant was also advised by this same notice that his personal record would be reviewed at the conclusion of the investigation. On December 14, 1979 Claimant was advised that he had been found guilty as charged and that he was discharged from Carrier's service.

A review of the record shows sufficient substantial evidence to warrant conclusion that Claimant is guilty as charged. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion". Both Car Foreman Spivey and Machinist Hart testified at the hearing that Claimant directed verbal threats at Foreman Spivey. Since Claimant categorically denies this the Board is confronted with direct conflict of evidence. The Board has ruled in numerous past Awards, however, that it will not resolve conflicts of evidence nor credibility issues if there is substantial evidence in the record which supports the action of the Carrier (2nd Division Awards 1809, 6195 and 6372 inter alia).

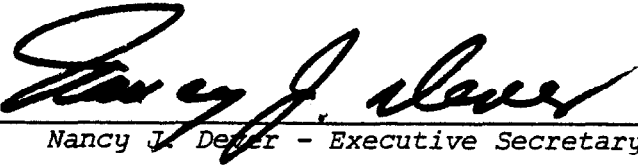
The only issue to be resolved by this Board, therefore, is whether the penalty imposed by the Carrier was reasonable. This Board has underlined in prior Awards that the role of discipline is not only punitive but that it should also provide corrective and training measures for employes (2nd Division Award 6485; Third Division Awards 5372 and 19037 inter alia). The Carrier may properly weigh a Claimant's work history to determine the quantum of discipline (Second Division Awards 6632 and 8527). A review of Claimant's work record shows a number of letters of reprimand during his five (5) year tenure with the carrier, although he had never engaged in behavior reprehensible enough to merit a suspension prior to the incident under consideration in the instant case. The Board does not find it unreasonable, therefore, by way of the application of the principle of progressive discipline, to direct reinstatement of the Claimant on a last chance basis to his prior position with seniority and other rights unimpaired but without back pay or other monetary benefits for time lost while out of service.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____


Nancy J. Deger - Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1983.