

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  
( National Railroad Passenger Corp.

Dispute: Claim of Employees:

1. That, in violation of the current agreement, Laborer R. E. Carter was unjustly dismissed from service of the Carrier following investigation held on March 19, 1981.

2. That, accordingly, the Carrier be ordered to make the aforementioned R.E. Carter whole by restoring him to Carrier's service, with seniority rights unimpaired, made whole for all vacation rights, holiday, 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 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.

On March 13, 1981, the Claimant was notified to attend an investigation on charges that he had been insubordinate (disobeyed an order to put up coal), absent from his assigned position, and behaving improperly. Following the investigation, the employee was notified that he had been found guilty and was dismissed from the Carrier's service.

The Organization advances two core contentions: (1) That the Claimant was not provided a fair and impartial investigation; and, (2) The Carrier did not meet its burden of proof with respect to the charges brought against the claimant.

The Board has carefully examined the investigative transcript to insure that the Claimant was provided a fair and impartial hearing. We find that the carrier's actions in conducting that proceeding were not violative of the due process provisions of the controlling agreement.

Turning to the merits of the case, the Board notes that there is some variance in the testimony of record with respect to the events which led to the Claimant's dismissal, particularly those events surrounding the occasion on which it is alleged that gloves were thrown and that physical contact took place between the Claimant and his Supervisor. The Board is not unmindful of these variations in the testimony. However, the Board must also acknowledge the consistently observed principle that it is not incumbent upon us to resolve questions of credibility.

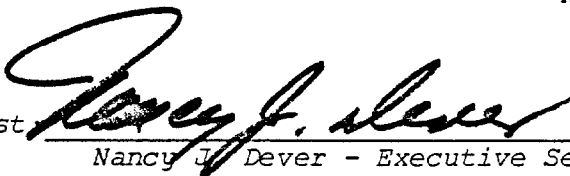
We have found that there is sufficient evidence to conclude that the Claimant disobeyed a direct order when he did not put up the coal. Claimant had previously been put on notice with respect to his employment responsibilities, for his disciplinary record, which includes two reinstatements on a leniency basis, and should have put him on warning. Under the circumstances and in view of the facts of record in the case before us, the Board does not have a basis to reverse Carrier's disposition.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest,



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of April, 1984