

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

Parties to Dispute: (Sheet Metal Workers International Association
(Southern Pacific Transportation Company

Dispute: Claim of Employees:

- (1) That claimant E. L. Robertson was arbitrarily and unjustly dismissed from service by the Carrier.
- (2) Restore claimant to service with seniority unimpaired.
- (3) Compensate claimant for all time lost in addition to an amount of 12% per annum compounded annually on anniversary of claim.
- (4) Make claimant whole for all vacation rights.
- (5) Reimburse claimant and/or his dependants for all medical and dental expenses incurred while claimant improperly held out of service.
- (6) Pay to claimants estate whatever benefits the claimant has accrued with regards to life insurance for all time claimant improperly held out of service.
- (7) Pay claimant for all contractual holidays.
- (8) Pay claimant for all contractual sick pay.
- (9) Pay claimant for all jury duty and all other contractual benefits.

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.

Prior to the occurrence giving rise to the dispute herein, claimant, with about two years and nine months of service, was employed by the Carrier as a Sheet Metal Worker at El Paso, Texas. On December 7, 1981, claimant was notified by the Plant Manager:

"You are hereby notified to be present at the Office of the Plant Manager, 201 N. Piedras Street, El Paso, Texas, at 9:00 AM, Monday, December 14, 1981, for formal hearing to develop the facts and place responsibility, if any, in connection with your allegedly striking Roundhouse Foreman F. Morales with your fist while on duty at approximately 5:30 AM, December 5, 1981, in the Mechanical Department employees' locker room.

You are hereby charged with responsibility which may involve violation of Rule 801, reading as follows:

'Employes will not be retained in the service who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism.

Any act of hostility, misconduct or willful disregard or negligence affecting the interest of the Company is sufficient cause for dismissal and must be reported.'

and Rule 802, reading as follows:

'Indifference to duty, or the performance of duty, will not be condoned.

Courteous deportment is required of all employes in their dealings with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden.

Employes must not enter into altercations, scuffle, play practical jokes, engage in horseplay, or wrestle while on duty.'

of the General Rules and Regulations, Southern Pacific Transportation Company.

You are entitled to representation and witnesses in accordance with your agreement provisions. Any request for postponement must be submitted in writing, including reason therefore, to the undersigned."

The hearing was conducted as scheduled, and a copy of the transcript has been made a part of the record. We consider the investigation, or hearing, to have been conducted in a fair manner. It is well settled that if exceptions are to be taken as to the manner in which an investigation is conducted, such exceptions must be taken during the course of the investigation; otherwise, they are deemed waived. There was an objection by claimant's representative to part of the statement of

Laborer R. D. Becomo being rejected by the hearing officer, but we not consider such objection to be of sufficient significance to invalidate the proceedings. Becomo had testified as to his alleged encounters with Roundhouse Foreman Morales, but stated that his knowledge of the incident between claimant and the Roundhouse Foreman was "Just rumors that I have heard around." We see nothing improper in excusing him as a witness at that time.

There were no witnesses to the alleged striking incident between the claimant and the Roundhouse Foreman. In the investigation the statements of the two were in conflict on most important points. The Carrier, as the trier of the facts, chose to believe the testimony of the Roundhouse Foreman rather than that of claimant.

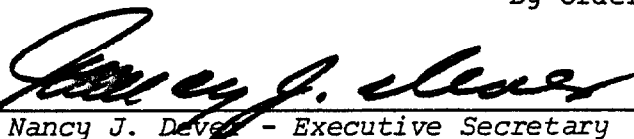
Many awards of this Board have adhered to the principle that the Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer. The Board may not reverse the Carrier's determination merely because of conflicts in testimony. The evidence in the present case was sufficient to justify the discipline imposed by the Carrier.

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 9th day of May, 1984