

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

Parties to Dispute: ( International Brotherhood of Firemen and Oilers  
( Southern Railway Company

Dispute: Claim of Employees:

1. That under the current and controlling agreement, Service Attendant Joel L. Lawler, S.S. No. 255-88-4088, was unjustly dismissed from the service of Southern Railway System on October 4, 1982, after a formal investigation commenced on June 28, 1982 and was completed on September 25, 1982.

2. That accordingly, Service Attendant Joel L. Lawler be restored to service at the Southern Railway System, Inman Engine Terminal, Atlanta, Georgia, and compensated for all lost time, vacation, health and welfare benefits, hospital, life and dental insurance premiums be paid, effective October 4, 1982 and payment of 10% interest rate be added thereon.

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 were given due notice of hearing thereon.

Claimant, Joel L. Lawler entered the service of Carrier on October 26, 1981 at Atlanta, Georgia. As the result of a telephone call between Claimant and Carrier's master mechanic on April 6, 1982, Claimant was charged with "conduct unbecoming an employee in that you repeatedly cursed Master Mechanic Brown and threatened and used abusive language toward him." A formal investigation completed on September 25, 1982 resulted in Claimant's discharge on October 4, 1982.

The Organization argued both in its submission and at hearing that the evidence was insufficient to prove that Claimant was guilty of the charge. Carrier strenuously maintained that it had met its burden of proof, and that the discipline was appropriate in light of the seriousness of the offense and Claimant's brief service record.

Carrier's master mechanic testified that during the phone conversation in question, Claimant referred to the former as a "smart bastard," a "smart son-of-a-bitch" three or four times, and terminated the conversation by saying, "f--- you Brown." This version of the conversation was substantiated by Carrier's general foreman who picked up another extension at the request of the master mechanic, and heard the latter portion of the telephone call. Furthermore, another witness for Carrier confirmed that the conversation took place and testified that the general foreman had picked up the phone, and that the master mechanic said nothing to provoke Claimant.

The Organization offered a tape recording made by Claimant of the conversation with Carrier to rebut the charge of abusive language. Carrier's charging witness and the general foreman admitted that the tape sounded authentic, but that the tape recorded only the first portion of the conversation and terminated prior to the abusive language by Claimant.

Claimant offered his wife's testimony that she heard no profanity, but she admitted to having to run after her daughter during the conversation. Claimant also called as a witness an individual who happened to be in Claimant's vicinity at the time of the contested phone call. While this independent witness stated he did not hear Claimant use any profanity, he was unable to remember exactly what was said from Claimant's end of the phone call.


While the precise words used in the conversation between Claimant and Carrier's master mechanic are hotly disputed, the record contains substantial credible evidence in support of Carrier's charge, and the Board is not in a position to weigh the credibility of the witnesses, and substitute its judgment for that of the trier of fact upon the record as presented. Abusive and vulgar language toward a supervisor is a serious offense which can warrant discharge. See, Second Division Awards No. 9866, No. 8239, and No. 7451. The discharge of Claimant in light of his length of service, and under the facts as developed at a fair and impartial hearing was neither arbitrary, capricious nor unreasonable.

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 22nd day of August 1984.