

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

(International Association of Machinists and Aerospace
(Workers
Parties to Dispute: (
(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employees:

1. That the Carrier improperly dismissed J. D. Clark, Sr. (hereinafter referred to as Claimant) from service on August 14, 1981.
2. That, accordingly, the Carrier be ordered to restore Claimant to service with seniority and service rights unimpaired with compensation for all wage loss.

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.

The Claimant has been employed as a Machinist at the Carrier's Diesel Shop in Argentine, Kansas since September 14, 1964. Following an investigation that was held on July 30, 1981 the Claimant was dismissed from service in violation of Rules 16 and 17 of Form 2626, Standard General Rules for the Guidance of Employees, 1978 Edition, for being quarrelsome, vicious and physically assaulting General Foreman Kahler by striking him in the face and threatening his life on June 17, 1981.

At approximately 4:55 p.m. on June 17, 1981, Foreman Kahler received a radio message that the Claimant had drank some water, gotten sick and wanted to see him. As Foreman Kahler approached the Claimant's work area, the Claimant came towards him yelling and screaming. When Foreman Kahler asked the Claimant to explain what was wrong, he replied that he had gotten sick after drinking some water. He claimed that he had been "poisoned" and that Foreman Kahler had some responsibility for his being "poisoned". The Claimant also accused Foreman Kahler of spying on him and repeatedly threatened to kill him, while waving his fist in Foreman Kahler's face. He then struck Foreman Kahler twice in the face. The impact of the second punch knocked off Foreman Kahler's hard hat and safety glasses. After Foreman Kahler was struck in the face for the second time, he radioed for assistance from the Carrier's Special Services Department.

There is nothing in the record to indicate that Foreman Kahler caused the Claimant's alleged illness. Nor can it be concluded that he verbally or physically abused the Claimant, or provoked him, either prior to, or during the confrontation that took place on June 17.

The Claimant has been in the service of the Carrier for approximately seventeen (17) years. There is nothing in the record to indicate that he had an unsatisfactory employment record during his tenure with the Carrier. Although his conduct was extremely serious, it was also irrational and a dramatic departure from his normal behavior--in other words, the Claimant's outburst was an aberration or lapse in his mental capacity. The Claimant was hospitalized immediately after the episode on June 17. Based upon the record, the Board is inclined to believe the Claimant, who said that his doctor told him that he suffered a nervous breakdown on the day in question.

Bearing in mind the responsibility of the Carrier to protect its employees from future outbursts of the kind involved in the instant case, the Board recommends the following:

1. The Claimant will place himself on leave of absence.
2. The Claimant will furnish whatever medical and/or psychiatric records that are necessary for the Carrier's Medical Director to properly evaluate his condition.
3. The Claimant will submit to any further medical and/or psychiatric examinations which the Carrier's Medical Director may deem necessary to properly evaluate his condition.
4. The Claimant's return to active service will be contingent entirely upon the favorable recommendation of the Carrier's Medical Director, following his evaluation of all medical and/or psychiatric records which he considers to be relevant to the determination. (See letter dated February 2, 1983 from B. J. East, Assistant to Vice President, Labor Relations, to F. E. Jenks, General Chairman.)

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy G. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1985.