NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10750
Docket No. 10818
2-SSR-CM-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(Seaboard System Railroad

Dispute: Claim of Employes:

1. That Carman D. L. Hickman, hereinafter referred to as the Claimant was improperly assessed 45 days suspension or a loss of $3,275.92 by the Seaboard System Railroad, hereinafter referred to as the Carrier, as a result of an investigation held on May 27, 1983, in which he was charged with insubordination for allegedly using profane and abusive language to Supervisor Mr. W. R. Jenkins.

2. Accordingly, the Carrier should be ordered to compensate Carman Hickman for all time lost and to make him whole in regards to all other employee benefits as a result of said suspension.

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 investigation was accorded as noticed on May 27, during which the testimony discloses that the charges arose following instructions issued by the supervisor on May 15, 1983 as to the manner and sequence he wanted the tasks at hand performed.

According to the supervisor's testimony, the Claimant loudly responded with a profane and abusive word, and, stepping closer to the supervisor, used another version more reprehensible than the first.

The Claimant did not deny that he used the word, but offered in his testimony twelve days following the outburst that he did not intend it be directed to the supervisor but more toward the work and the situation at hand,

ultimately completed the task at hand. That he did so was acknowledged by the supervisor but who added that the claimant's time delay and attitude displayed in performing his job was not satisfactory for he had to tell him five times what and how he wanted the task performed, finally in the presence of another employee.

The Petitioner has charged that the Carrier did not produce sufficient evidence to prove the Claimant guilty. In support of that contention it was stated that the Carrier could not produce any witnesses to sustain the supervisor's testimony but that the Claimant did produce a witness who testified that he heard no loud talk, that he was five feet away.

That he heard no loud talk and that he was five feet away is correct insofar as those contentions go, but that took place after the Supervisor had summoned the witness away from where he was working at the time to listen to the instructions being repeated to the Claimant. The witness testified that prior to being summoned by the supervisor he was fifteen feet away, did not hear the loud talk for the torch he was operating was noisy and that "engines and stuff" were running close by. Relevant evidence to support the Petitioner's contention has not been presented.

Additionally, the Petitioner charged that the supervisor was falsely testifying, that the charges were fabricated and not factual, that abusive language was not used, that the supervisor acted in an irrational manner when instructing the Claimant and that since the Claimant did complete the job as instructed he was not disobedient and, therefore, not insubordinate. Searching and considering the record as thoroughly as we have, we nonetheless, have not been successful in finding substance to those charges. Unsupported declarations do not a case make.

As to the responses to the supervisor's instructions being nothing more than "shop talk", we are not convinced that those responses can be characterized as such. The use of profane and abusive language accompanied by a close and threatening approach to a supervisor might - and often does - subject the offender to dismissal. The offender does so at his own peril. Certainly the assessment of a 45-day suspension in this case cannot be considered excessive or capricious, nor in violation of Rule 34.

Review and consideration of the extensive testimony supports the conclusion that the Claimant was accorded a fair and impartial hearing and that none of his procedural rights were violated. The measure of discipline will not be disturbed.

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 19th day of February 1986.