

The Third Division consisted of the regular members and in addition Referee Robert O. Harris when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
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(Richmond, Fredericksburg & Potomac Railroad Company

STATEMENT OF CLAIM:

1. That in violation of the current agreement, Firemen and Oiler Donald A. Coles was unjustly assessed a 25 working day suspension beginning March 2 and concluding on April 3, 1989.

2. That accordingly the Carrier be ordered to make the aforementioned D.A. Coles whole by removing discipline from his record and compensating the Claimant for all time lost and any other benefit that he may have lost during his suspension that is a condition of employment during the time he was withheld from 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 February 15, 1989, Claimant attended a Hearing at Richmond, Virginia, to defend himself against charges of being away from his work area and playing a guitar while on duty. During the course of the Hearing Claimant was asked whether he wished to make a statement. The following then occurred: [as originally transcribed in the Carrier's February 15, 1989 Hearing record.]

"Hearing Officer:

Mr. Coles would you like to add anything to this?

[Claimant]

Can I?

Hearing Officer

Yes Sir.

[Claimant]

What I would like to say is, I think this is a bunch of bull period. I'm getting sick and tired of Bob Ashburn taking black men out of service, wasting my day, no evidence and I'm sick of it. I've talked to Mr. Crovo, I've talked to Mr. Griffin, I've talked to, I can't think of his name right now, Mr. Hobbs, I'm sick and tired of it. Look like this company is trying to run everybody away, the management arguing with management, running management away. Ashburn is always picking on black men. He has a record of it. I've worked, I would say with five supervisors, I have never been in this office with some pittily mess like this and the black men on this railroad, we're sick and tired of it and I've talked to the President, look like their not going to do anything about it, so look like I'm going to do something about it. I want my hour and half that I lost when he sent me home. I want that paid back because he has no evidence, he's dragging me in here on my off day and I don't appreciate it at all. He's a bigot, everybody at the shop knows that Ashburn is a bigot.

Hearing Officer interrupts

Mr. Coles, I would like.

[Claimant]

I haven't finished, excuse me.

Hearing Officer

Alright.

[Claimant]

He know that he is and everybody at this shop know that he is. And I don't appreciate him treating black men this way. He tried to work our tongue out in the shop. We work, we clean the shop, the black men clean the shop, the white men doing nothing, drinking coffee. We gone into investigation about that. I've talked to McGahey about drinking coffee. The white man drink

coffee, the black men slave. He's known for that. He says he hates niggers, period. I can't document that, but he say he hates niggers and jews. He hate those type people and its obvious everybody in here can see that this man is a bigot. He's perverted, he can sue me for slander, but I can prove it. I don't care. I'm getting sick and tired of it. (Let the record show that during the last sentence made, Mr. Cole's was banging on the table). I'm not tolerating it anymore! The black man on this railroad, we're not tolerating it anymore. Know the investigation is on me; if you look at it, you can look at his record. You're not, I know, uh - uh, he's stupid, but I feel like the company is dummier.

Hearing Officer interrupts

Mr. Coles, I'm going to stop you right there. Mr. Coles, you're going to stop. Mr. Coles. We're going off.

(Note: While Mr. Smith was making his statement above Mr. Coles was talking at the same time making the statement below).

[Claimant] continues

I feel like the company is dummier for tolerating this. I don't think that they should tolerate this, because I'm not going to tolerate it period. I'm not going to tolerate it and that's it.

Hearing Officer interrupts

You're going to conduct yourself in a gentleman like fashion.

[Claimant] continues

You asked me if I wanted to speak and I'm speaking. The only thing I want you to do is just sit back and listen.

Hearing Officer

I will tell you when I'll sit back and listen. I'll tell you when you'll sit back and listen.

[Claimant]

We've gone through this before.

Hearing Officer

I have conducted this thing in a gentlemanly like manner and you're going to.

[Claimant]

I have to. I am. I'm speaking. That's all I'm doing is speaking. You're getting offended because I'm calling this man a bigot.

Hearing Officer

No I'm not.

[Claimant]

We know he is.

Hearing Officer

No I'm not. I'm getting offended at the fact that you're not conducting yourself in a gentlemanly like manner.

[Claimant]

What am I doing? I'm speaking. You asked me to speak. You said, 'do you have anything to say Mr. Coles' and I'm speaking.

Hearing Officer

Are you finished speaking Mr. Coles?

[Claimant]

No, I'm not, you're cutting me off. You rudely cut me off.

Hearing Officer

Are you finished now?

[Claimant]

Why did you cut me off?

Hearing Officer

Because you're not conducting yourself in a gentlemanly like manner.

[Claimant]

What should I do? I'm sorry Mr. Smith, what should I do?
What am I not doing?

Hearing Officer

You should conduct yourself in a gentlemanly like manner
in an investigation.

[Claimant]

What is gentlemanly like manner? What am I doing wrong?
Can I finish speaking? Since you just keep

Hearing Officer

Go right ahead.

[Claimant]

Okay. Like I said, I am not going to tolerate, the
black men on this railroad, we are not going to tolerate
it anymore. I've already said that I want my pay. This
is not South Africa. This is America, the United States
and we're not going to tolerate this. I'm not going to
tolerate this. Since all the investigations you have
had, I bet you haven't seen this man, this particular
man, bring a white person in here. Like white people
don't do anything wrong. We're sick and tired of it.
Like I said, it's not South Africa, that Jim Crow mess
is over, this is 1989. I'm not going to put up with it.
I'm going through steps and I'm going to see to it that
you are removed. (Let the record show that these
comments were directed at Mr. Ashburn) You're going to
be removed, something is going to happen. This railroad
is going to do something. I'm finished.

Hearing Officer

Mr. Coles, Mr. Coles.

[Claimant]

I'm finished, you have the floor, thank you."

On February 17, 1989, Claimant was charged with insubordination and
uncivil conduct during and immediately following the February 15, 1989 Inves-
tigation. The conduct following the Investigation in question was Claimant's
statement to Mr. Ashburn that he would pay for this. The statement did not
appear to the witnesses to be a physical threat.

In the companion case, the Board reduced the penalty assessed because it was found that the Carrier had failed to prove that Claimant had actually played his guitar while at work, although he had brought the guitar to work against a Carrier directive.

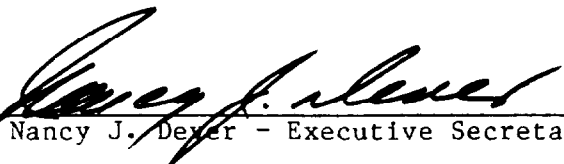
The Board finds that Claimant was extremely upset because of what he thought were false accusations which he blamed upon racial prejudice. He did not make any disturbance at the March 7, 1989 Hearing and only spoke when the Hearing Officer gave him that opportunity. His alleged threat was nothing more than the blowing off of steam and merely stated in another form his belief that the individual involved was prejudiced against blacks. Claimant was neither insubordinate, nor did he engage in uncivil conduct, if that meant that he was disorderly. If not uncivil conduct, there is no basis for disciplinary action. The Claim will be sustained and Claimant will be paid for all time lost.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1992.