

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13799
Docket No. 13679
04-2-02-2-29

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (National Conference of Firemen & Oilers
(Soo Line Railroad Company
(Canadian Pacific Railway – US)

STATEMENT OF CLAIM:

- “1. Under the current controlling Agreement Mr. John Vitaska, laborer, Chicago, Illinois, was unjustly dealt with when assessed a ten (10) day suspension, following a hearing held on September 27, 2001.
2. That accordingly, Soo Line Railroad company (Canadian Pacific Railway US) be ordered to remove any reference to a ten day suspension from Mr. Vitaska’s personal file and that he be paid for all time lost account of this 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 employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant was employed on November 11, 1991, as a laborer in Chicago, Illinois, by the Soo Line Railroad Company.

On September 12, 2001, the Claimant engaged in a confrontational verbal exchange with a fellow Electrician at the Bensenville Service Truck, Chicago, Illinois. During this exchange, the Claimant allegedly made threatening and inappropriate remarks to the co-worker.

By letter dated September 14, 2001, the Claimant was cited for Investigation for the alleged verbal assault. After the Investigation, the Carrier reviewed the evidence presented and found it sufficient to sustain the charges. The Claimant was assessed a ten-day suspension.

The Organization appealed the Carrier's discipline on behalf of the Claimant.

The Carrier maintains that the Claimant's actions were serious and worthy of the discipline assessed. It points out that he admitted that during his testimony, the Claimant said, "I said, I wanted to put a bullet in you. . . ." It contends such an admission eliminates the need for further evidence. Clearly, the Claimant committed the alleged actions and the discipline was reasonable for such a serious offense.

The Organization argues that the disagreement between the two employees was nothing out of the ordinary. It says this bantering occurs on a regular basis. Moreover, it contends, the co-worker was difficult to get along with and had used abusive and sexual related comments. On the day in question, the co-worker was advised that his job was furloughed for a few days. It says the Claimant merely offered the co-worker advice about the possibility of his retiring. It contends the co-worker in return gave a smart retort and the Claimant responded, "I would like to put a bullet in you."

Regardless of the serious nature of the comment, the Organization maintains that witnesses said this kind of conversation occurs all the time. It disavows any serious intent in the exchange. It points out that even the co-worker did not take the

remark seriously and did not bother registering a complaint or showing up at the Hearing.

The Organization insists the discipline assessed was excessive.

The Board recognizes that there is often "shop talk" which goes on among workers which outsiders may find offensive but which to the regular shift employee is totally innocuous. However, even the Board recognizes that in this day and age, threats cannot be taken lightly and hostile retorts cannot go unpunished.

Violence in the work place is among the most serious problems facing American Industry today. The Carrier was correct in taking the remarks seriously and taking the position that such remarks will not be tolerated. It does not take much for such bantering to escalate into far more serious responses and eventually into physical altercations. The Carrier has an obligation to provide a safe, secure, and non-hostile work environment.

We believe there is substantial evidence of the Claimant's culpability in this matter and do not find the discipline assessed out of line with the infraction.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 27th day of April 2004.