

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Frank S. Weinstein, Extra Trucker, Kensington Freight Station, Philadelphia, Pennsylvania, he returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from October 22, 1947, until adjusted.

(Docket E-526)

OPINION OF BOARD: On October 22, 1947, Claimant was a regularly assigned extra trucker at Kensington Freight Station at Philadelphia, Pennsylvania. On the foregoing date, he was dismissed from service for refusing to obey the instructions of his foreman on October 1, 1947.

The facts out of which the charges arose are substantially as follows: Claimant and one Neal were helping unload a truck load of baled cotton into a car. Claimant says when the truck was unloaded, the driver informed them he would be back with another load in about ten minutes. Claimant took advantage of the situation to go for a drink of water. As he was returning, Foreman Crawford directed him to go to the yard and assist in the loading of wool shipped by the Philadelphia Wool Scouring and Carbonizing Company. He told the foreman that he was working on another job, that he was not going over there and to check him out. The foreman says that Claimant told him to "go to hell" and threw his hook on the platform. The foreman sent another employe to perform the work. Claimant expressed his version of the incident as follows: "All I can say is that after the incident occurred on the back platform I apologized to Mr. Crawford and I felt that as far as he and I was concerned the case was forgotten, but the next morning I was surprised when I changed my clothes and I picked up my truck to go to work, Mr. Crawford told me the incident had been reported to Mr. Clark and that I was being held off from work." With reference to the language directed to the foreman, Claimant says: "I definitely remember throwing the hook on the floor, but about telling Mr. Crawford, I don't remember, I was mad at the time, but I am not in the habit of swearing at men older than myself."

The record clearly shows that Claimant refused to carry out the instructions of his foreman. Such conduct is very detrimental to the Carrier and is of sufficient magnitude to warrant dismissal. The evidence, including the testimony of Claimant himself is sufficient to sustain the action of the Carrier.

Complaint is made that a proper notice of the trial was not given. Written notice was given prior thereto. Claimant was present with two representatives

and participated in the hearing without any objection being made to the holding of the hearing at that time. The notice given served the purpose for which it is required.

There is a contention advanced that Claimant's dismissal was the result of personal enmity on the part of Foreman Call. It is argued that Foreman Call and Claimant had some personal business dealings with each other that motivated Call in reporting the incident out of which the charge arose although he (Call) was not present or personally interested therein. There is no evidence in the record of any such dealings or of any "bad blood" resulting therefrom. Claimant testified at the trial and gave no evidence tending to sustain such a conclusion. Foreman Call was present and was not called as a witness and interrogated about any such transactions. This Board cannot speculate regarding the truth or falsity of such recriminatory statements. There must be evidence to support them before they can receive consideration here.

It is essential to the operation of a railroad that subordinates obey the orders of superiors. Refusal to do so may jeopardize the safety of persons or the property rights of others and constitutes a serious violation of the terms of the employment. It is the prerogative of management to maintain discipline among its employees and where its action is sustainable by the record, this Board will not substitute its judgment for that of the Carrier. We find no circumstances in mitigation of the gravity of the offense that warrants our interference with the penalty assessed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 18th day of October, 1949.