

Award No. 6186
Docket No. MW-6059

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the effective Agreement when they dismissed Section Laborer Tommie D. Cunningham, Obion, Tennessee, from service on July 24, 1951;

(2) Section Laborer Tommie D. Cunningham, be restored to his position as Section Laborer at Obion, Tennessee, with seniority and vacation rights unimpaired and compensated for the wage loss suffered since July 24, 1951.

OPINION OF BOARD: This claim by the System Committee involves the dismissal of Section Laborer Tommie D. Cunningham of Obion, Tennessee. It claims Carrier violated the parties' effective Agreement in doing so and asks that Cunningham be restored to his position as section laborer at Obion, Tennessee, with seniority and vacation rights unimpaired and that he be compensated for all wage loss suffered since July 24, 1951.

The altercation out of which this grievance arose occurred on the morning of Tuesday, July 24, 1951, at a point on Carrier's track about one-half mile north of Trimble, Tennessee. The participants in the altercation were claimant and section laborer J. W. Lyons, both members of a section crew under the supervision of Section Foreman J. P. Ford. The crew was engaged in pulling and repairing track. Other members of the crew were section laborers J. L. Jackson and Johnnie Reid.

Carrier charged both Cunningham and Lyons with their "responsibility for the alleged violation of Maintenance of Way Rule No. 9 on Tuesday, July 24, 1951, near Trimble, Tennessee."

Rule 9 therein referred to provides as follows:

"Conduct. Gentlemanly deportment is required of all employees in their relations with the public, their subordinates and each other.

Boisterous, profane or vulgar language is forbidden. Courtesy and attention to patrons are demanded. Employes must not enter into altercation with any person, no matter what provocation may be given, but must make note of the facts and report to their immediate superiors.

"Employes who are insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, will not be retained in the service."

Hearing was held on August 10, 1951 and on August 17, 1951 Carrier advised both Cunningham and Lyons that they had each been found guilty of the charges which Carrier had made against them and that each was discharged from its service.

Claimant contends he is not guilty of the charges, that whatever he did was done in self defense, and that he never did strike Lyons.

The evidence fully establishes that an altercation took place between these men at the time and place as charged. Each testified as to his version of what happened and how it happened. In this regard the evidence is in conflict. From all the evidence adduced Carrier could very properly find that both parties were at fault in causing the altercation and that each was therefore guilty of the charges made against him.

Some complaint is made of the fact that J. P. Ford cross-examined witnesses. Ford, without objection, was representing Lyons and as such had a right to cross-examine.

Complaint is made that Carrier did not treat both parties alike. Claimant was immediately held out of service whereas Lyons was permitted to work until the date of his dismissal, which was August 17, 1951. Carrier had the right to hold either or both of these men out of service pending hearing and decision under Rule 25 (g) of the parties' effective Agreement. This rule provides, in part:

"Employes may be held out of service pending hearing and decision, * * *."

It may be that such action showed favoritism on the part of Ford and will not produce good results as far as labor relations are concerned, but that is not a question for this Division.

Was the order of dismissal unreasonable under all of the circumstances? Claimant had seniority as of June 6, 1942. It was a hot day and the men were performing strenuous labor. Were it not for the fact that the record discloses claimant to be a quarrelsome individual, quick to get mad, we would be inclined to think so, but in view of that fact we find Carrier did not act arbitrarily or unreasonably in dismissing claimant.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the parties' effective Agreement.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1953.