

Award No. 10113
Docket No. CL-12313

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

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

THE UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, (GL-4883), that:

(a) The Carrier's Dismissal of Western Taylor on December 28, 1959, was arbitrary, unjust and in abuse of its discretion.

(b) That Western Taylor be restored to his former position of Red Cap, without impairment to his vacation, seniority and other employe rights.

OPINION OF BOARD: Western Taylor, the Claimant, was hired on December 10, 1956 as a Red Cap by the Union Terminal Company at their Dallas Terminal in Texas, and he was verbally dismissed on December 28, 1959, for reportedly refusing to follow instructions of Mr. J. W. Thrower, Assistant to General Manager, and for allegedly threatening to do bodily harm to Mr. Thrower. The Claimant's verbal dismissal was confirmed by letter on December 30, 1959.

A formal investigation was conducted by the Carrier's Mr. O. B. Sayers, Assistant Director of Personnel, on January 8, 1960, and the charges against the Claimant were sustained and his reinstatement request denied.

At the time of his dismissal, the Claimant was working from 2:25 P. M. to 11:25 P. M.—with one hour for lunch—Thursday through Monday with Tuesday and Wednesday as rest days.

Prior to discussing the Board's position in this case, it is necessary to review briefly the events preceding the Claimant's dismissal.

On Sunday, December 27, 1959, after working three and a half hours, Claimant Taylor reportedly became ill. He reported to and was checked out by a Ticket Clerk, in accordance with the provisions set forth in Circular No. 69. The Ticket Clerk failed to comply with the usual practice of notifying the Claimant's immediate supervisor, Acting Assistant Red Cap Captain Thomas F. Culberson, of Claimant's departure.

On Monday, December 28, 1959, at approximately 5:15 P. M., Mr. Thrower approached and asked Claimant Taylor who checked him out the previous day. The parties disagree as to the Claimant's reply but the substance of the Claimant's answer was that he didn't know. Testimony indicates that Mr. Thrower then asked the Claimant "if he had been drinking" and the Claimant answered "No".

Mr. Thrower then directed the Claimant to come with him to the ticket office and the parties are agreed that the Claimant did follow Mr. Thrower to the ticket office door. However, the parties disagree as to the conversations and activities between the Claimant and Mr. Thrower prior to and after Mr. Thrower opened the door to the ticket office. Neither do the parties agree on what transpired when Mr. Thrower with Special Officer Johnny Gaspero followed the Claimant to the Employees' Dressing Room.

The Organization contends that Mr. Thrower deliberately provoked the Claimant both by his questions and actions and even threatened to hit the Claimant. The Organization further alleges that the Claimant was a "prime target for retaliation by the management" because the Claimant, who "was and is" President of the Local Red Cap Lodge, was outspoken in his criticism of Company's refusal to comply fully with the National Railroad Adjustment Board's Award 8891, and for also criticizing the Company's attitude "that it could require Red Caps to perform any and all janitorial service in and around the terminal property".

The Carrier maintains that Mr. Thrower did not provoke the Claimant nor did he threaten to hit him. The Carrier contends that when Mr. Thrower opened the ticket office door and invited the Claimant to enter, the Claimant not only refused to enter the office but also threatened to hit Mr. Thrower. When Mr. Thrower reportedly remarked to the Claimant that "if he wanted to continue employment with the Union Terminal, that he would have to do as he was asked", the Claimant is alleged to have again threatened to hit Mr. Thrower and then walked off to the Employees' Dressing Room. Mr. Thrower reported that he and Special Officer Gaspero followed the Claimant to the Dressing Room where an interchange of questions, answers and remarks took place among the Claimant and Messrs. Thrower and Gaspero. It was during this discussion that Mr. Thrower told Claimant Taylor that he was out of service.

The record indicates that the Claimant was accorded a proper investigation and that he and his representative were allowed to examine all papers and to ask as many questions as they wished.

There are many conflicts and discrepancies in this case. However, it is not the Board's function to resolve conflicts or discrepancies; neither is it the Board's purpose to appraise the credibility of witnesses; nor to substitute—in disciplinary matters—its judgment for that of the Carrier unless the latter's action was harsh or excessive.

There is no convincing or supported testimony to indicate that Mr. Thrower deliberately provoked the Claimant or that the Carrier had made the Claimant a "prime target for retaliation".

The record indicates that the Claimant was guilty of insubordination. Furthermore, the weight of the evidence, if believed, tends to indicate that the Claimant did threaten Mr. Thrower—while the testimony that Mr. Thrower threatened to hit the Claimant is supported only by the Claimant's allegation.

Accordingly, the Board rules that the evidence reasonably tends to support the Carrier's action and that the discipline invoked was not arbitrary, unjust, or in abuse of its discretion.

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 Employe involved in this dispute are respectively Carrier and Employe 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.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October, 1961.