

Award No. 10538

Docket No. MW-9665

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) The dismissal of Section Laborer Ollis L. Mitchell on June 25, 1956 because of alleged insubordination was without just and sufficient cause and on the basis of unproven charges.

(2) Section Laborer Ollis L. Mitchell's record be cleared of the unproven charges of insubordination and that he be allowed payment for any time lost, all in accordance with the provisions of Rule 10(e) of the currently effective Agreement.

OPINION OF BOARD: The Claimant was accused of insubordination because he used obscene language in an argument with his foreman about the amount of overtime he was to receive. This argument occurred during the lunch hour on the Claimants free time.

The argument was not instituted by the Claimant, but he joined it after another Employee inquired about the amount of overtime they were to receive for unloading sheep. The regular tour of duty for those Employees was from 7:00 A.M. to 3:30 P.M., but they were notified by the foreman on the day before to report for work at 4:30 A.M. the following day. This was done, and they worked until 6:00 A.M.

During the course of the argument between the Claimant and foreman vile and obscene language was used. After the termination of the lunch hour, the crew returned to work. On the following Sunday, the Claimant was handed a letter of dismissal, charging insubordination.

While we do not condone the use of vulgar and obscene language, there is nothing in the record to sustain insubordination. There was no defiance of authority indicating that the Claimant wilfully refused to perform orders or directions of an official.

The accusatory acts in the nature of a gripe, and were expressed during the free time of the Employee in the traditional forum of Employees during their lunch hour.

The Claimant's record of employment exhibits no past disciplinary action, he had been employed for a period of eight years by the Carrier.

It is true that there are past precedents of this Board denying claims arising from the use of obscene and vile language, but these cases involved the use of similar language in response to an order or direction by a superior official while on duty or was used in the presence of patrons and passengers of the Carrier.

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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1962.