

Award No. 14164

Docket No. CLX-14052

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood (GLX-146) that

(a) The Agreement governing hours of service and working conditions between R E A Express and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective September 1, 1949, was violated at the Dearborn Express Terminal, Chicago, Illinois, in the discipline imposed upon Platformman James J. Coleman, Jr. as a result of an investigation held October 31, 1961; and

(b) He shall now be compensated for monetary losses sustained as a result of being suspended from service for seven (7) days beginning November 5, 1961.

OPINION OF BOARD: By Carrier notice dated October 27, 1961 Claimant Coleman was cited for investigation on the charge that on October 26, 1961 he violated Rules 824 and 831 of Carrier's General Rules and Instructions in his conduct towards his immediate supervisor, Working Foreman John E. Thomas. Rule 824 deals with insubordination; Rule 831 refers to use of profane or vulgar language while on duty. Following the investigation, Carrier found Claimant guilty as charged and assessed a seven day suspension effective November 5, 1961.

It is conclusively established in the record that on the date of the subject incident Claimant Coleman repeatedly turned off the power on a conveyor belt, used for unloading freight, in spite of Foreman Thomas' instructions to leave the power on. The Claimant's defense that he acted in this fashion for safety reasons is not supported by the evidence. There is conflict in the testimony concerning whether Claimant used abusive and vulgar language in addressing the supervisor during the course of the subject incident. However, the evidence as a whole gave Management reason to conclude that

Claimant used the improper language with which he was charged. No mitigating circumstances were shown.

Carrier therefore properly determined that Claimant Coleman was guilty of violating the subject Carrier rules of conduct. Claimant thereby exposed himself to disciplinary action. We note that only shortly before the disputed incident Claimant was suspended from service for ten days, after being found guilty of insubordination and use of profane language. In view of this background it cannot be contended with any semblance of justification that the seven day suspension, which was assessed for Claimant's conduct in the present case, constituted an excessive penalty.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1966.