



Award No. 17157

Docket No. CL-18090

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6541) that:

- (a) The Southern Pacific Company violated the current Agreement between the parties at San Jose, California, when on February 15, 1967, it dismissed Mr. C. H. Brown from service without just cause; and,
- (b) The Southern Pacific Company shall now be required to restore Mr. C. H. Brown to service with all rights unimpaired and compensate him for all wage loss from February 15, 1967 until restored to service with all rights unimpaired; such rights to include hospital association benefits, paid for life insurance, and hospital, medical and surgical insurance for himself and dependents, Travelers Insurance Company.

OPINION OF BOARD: Claimant, C. H. Brown, was dismissed by Carrier on the charges that when he reported for duty and had been instructed as to his assignment, he violated the Agreement by using profanity and refusing to do the work by laying himself off sick.

The Organization alleges that Carrier violated the agreement by dismissing Claimant without just cause, since the evidence did not justify the dismissal, since the charge of profanity was controverted by Claimant himself, and since his claim of illness was not contradicted nor refuted. No procedural defect is raised by the Organization.

A careful review of the record leads this Board to conclude that the Claimant decided that he did not intend to do the janitorial work outlined to him by his superiors; that he declined to do so in profane language in the hearing of people in the station waiting room; and that he decided he would not work by virtue of an illness which he developed within the five (5) minute period it took for his job instructions.

The Agreement states:

"Rule 802: Civil, gentlemanly deportment is required of all employees in their dealings with . . . each other. Boisterous, profane, or vulgar language is forbidden.

"Rule 810: They (employees) must not absent themselves from their employment without proper authority."

This Board concurs that the particular obscenity used in the context in which it was used and within the hearing of potential passengers of Carrier falls within the prohibition of Rule 802. This Board further concurs with Carrier in finding that the Claimant absented himself from his job by a contrived excuse, and such "unauthorized absences from duty, if proven, are serious offenses and often result in dismissal from service." (Award 14601).

As this Board has said: "The precedent is too well established, that this Board should not substitute its judgment for that of the Carrier in discipline cases where it has produced substantial evidence that the offense charged was committed . . . Decisions of this kind, as well as imposition of discipline, are within managerial discretion." (Award 13168. See also Award 16074).

The Board's position was summed up in Award 16347: "As to the merits of the case, the record is conclusive that Claimant was guilty of conduct that simply cannot be condoned. We have no alternative but to deny the claim."

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 the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of May 1969.