



Award No. 17269

Docket No. CL-17916

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAM-
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6534) that:

- (a) The Southern Pacific Company violated the current Agreement between the parties when on July 1, 1968, it arbitrarily and unjustly dismissed Mr. Raymond Simmons from service; and
- (b) The Southern Pacific Company shall now be required to restore Mr. Raymond Simmons to service with all rights unimpaired and to allow him eight (8) hours' compensation at the rate of Rate Clerk June 19, 1968, and each date thereafter until he is restored to service with all rights unimpaired; and,
- (c) For any month in which claim is here made for compensation on behalf of Mr. Simmons, the Southern Pacific Company shall also make premium payments in his behalf in appropriate amounts required under Travelers Group Policy Contract GA-23000 as amended, for all benefits prescribed in said contract.

OPINION OF BOARD: Claimant, in Carrier's employ for almost two years, was engaged in an altercation with a fellow employee as they were coming out of an elevator on Carrier's property after work. Claimant's co-worker was cut by a sharp object and was treated for this wound. Both employees were notified and did attend an investigation of the charges of violating Rules 801 and 802 of the General Rules and Regulations of Southern Pacific Company, which read in part:

"Rule 801. Employees who are . . . quarrelsome or otherwise vicious, will not be retained in the service."

"Rule 802. Civil, gentlemanly deportment is required of all employees in their dealings with . . . each other . . . Employees must not enter into an altercation, but will report the facts to their immediate superior."

As a consequence of the investigation, Claimant was found guilty of violating the above-cited rules and was dismissed. His co-worker was retained in service.

Employees contend that Claimant was dismissed on the basis on speculative and inconclusive evidence, and further, that justice was not evenly meted out with respect to the two participants in the altercation which happened after work.

Claimant was still on company property, and as we said in Award 8993, "We are not ready to hold that a serious offense of an employe, although committed while off duty . . . may not be a proper basis of a charge, which if proven, will support his dismissal"—we here again confirm.

Further, "merely because others share responsibility and are not disciplined to the same degree does not transform otherwise appropriate discipline into an abuse of discretion." (Award 9444).

While there was in the instant case conflicting testimony, we find that the record contains sufficient probative, credible and competent evidence to support Carrier's action. (Award 9493). In the case of a serious offense, as an altercation involving some sort of sharp object on Carrier's property between two of its employees, this Board will not set aside the measure of discipline rendered by Carrier in an attempt to protect its employees and assure that such altercations do not reoccur. We said in Award 5032: "Our function in discipline cases is not to substitute our judgment for the company . . . but to pass upon the question whether, without weighing it, there is some substantial evidence to sustain a finding of guilty. Once that question is decided in the affirmative the penalty imposed for the violation is a matter which rests in the sound discretion of the Company and we are not warranted in disturbing it unless we can say it clearly appears from the record that its action with respect thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of that discretion." For the above reasons, this claim is denied.

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 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 30th day of June 1969.