

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19795
Docket Number CL-19999

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7190)
that:

(a) The Carrier violated the Agreement when, beginning December 6, 1971, it relieved Mr. James C. Turner from active service with The Chesapeake and Ohio Railway Company, and

(b) That Mr. James C. Turner be restored to service with his full seniority and compensated for all wages and wage equivalents lost for the period he is held out of service because of the Carrier's wrongful action.

OPINION OF BOARD: The Claimant was dismissed from Carrier's service on December 6, 1971 for being insubordinate to his Supervisor on November 10, 1971, and for use of profane and abusive language at that same time.

The Board has reviewed the entire record in the case, including the lengthy transcript of the investigation conducted on November 29 and 30, 1971, and finds that none of Claimant's substantive procedural rights were violated. While the investigation was unduly prolonged, and both sides introduced extraneous matters, rather than confining themselves to an orderly developing of the facts on a rather uncomplicated charge, we cannot find that the investigation was conducted in other than a fair and impartial manner.

There was considerable discussion at the hearing concerning subjective opinions as to changing concepts of profanity. However, the entire record supports the charge of profanity in this case. Moreover, the transcript contains probative evidence that Claimant was insubordinate and that his language was abusive. The Carrier cannot be expected to condone the use of "bar-room" language in an office where men and women are employed in relatively close proximity. Discipline was warranted, but upon the entire record we feel that permanent dismissal was excessive. The Claimant will be restored to service with seniority and other rights unimpaired, but without compensation for time out of service.

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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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1973.