

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19886
Docket Number m-20143

Irving T. Bergman, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(St. Louis-San Francisco Railway Company

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

(1) The dismissal of Truck Driver-Laborer L. Caddy, Jr. for allegedly violating Rule 176 was improper, without just and sufficient cause and based upon unproven charges (System File A-9388).

(2) Truck Driver-Laborer L. Caddy, Jr. be reinstated with seniority, vacation and all other rights unimpaired, the charge against him be stricken from his record and he be compensated for all wage loss suffered, all in accordance with Rule 1 (c) of Article 4.

OPINION OF BOARD: This is a discipline case resulting from the dismissal of claimant for violation of Rule 176, which provides in material part, the following: "Employees who are--or indifferent to duty, in-subordinate,---, quarrelsome, ---, will not be retained in the service."

Claimant started with the Carrier on September 29, 1970 as a laborer. About January 15, 1971, he began service with District Gang No. 311. On May 2, 1972, he was assigned as a truck driver-laborer with District Gang No. 310, by reason of seniority over a junior employe who had been given first choice.

The Carrier has pointed out in its submission that the Foreman of DG 311 had thirty one years service, the Roadmaster supervising DG 310 had thirty seven years service. The Organization has contended in its submission that the events leading to dismissal resulted from harassment by supervisors who had preferred to assign the junior employe to the position which was, however, successfully bid by claimant.

The Carrier has also stated in its submission that for approximately three and one half months that claimant worked as a laborer his record is **clear**. The Carrier's position is, however, that from January 15, 1971 to May 1, 1972, with DG 311, and from May 2, to May 22, 1972, this was not the case. For example, claimant's record shows that he was removed from **service** on January 15, 1971 for insubordination and was restored to service two days later. Claimant's record also shows that on October 21, 1971, while with DG 311, he was reprimanded by the Engineer of Tract and Structures with respect to his work attitude and failure to follow instructions of his foremen. The statement in the personal record as to this reads as follows: "On this date I talked to Caddy about his work attitude which is very poor. Also talked

to him about his failure to properly tighten bolts and about his refusal to follow instructions of his foreman on nearly all other phases of his work. Apparently he just does not like to be told what to do. His attitude was very surly and do not believe the talking will help much."

The dismissal followed events which occurred on May 22, 1972, when claimant arrived for work about five minutes late. The Carrier's testimony is that he was reprimanded by his foreman who told him that in the future he should not report for work on a day that he was going to be late. Claimant then threatened to physically assault the foreman, the assistant foreman and the Roadmaster. A special agent was called to remove the claimant in order to prevent violence, as contended by the Carrier. A request for hearing was made by the Organization. After the hearing, the dismissal was upheld.

Examination of the record of the hearing disclosed that both claimant and his representative stated that the hearing was fairly conducted. Testimony at the hearing concerning the removal from service on January 15, 1971, indicates that there was an altercation instigated by claimant who became belligerent when his pay check was not delivered to him. The Organization representative intervened to ask for another chance for claimant.

Without detailing the testimony, the record clearly shows that each supervisor testifying in turn had constant complaints about the claimant's work attitude, his indifference to instructions as they were given to him by supervisors; that he took it upon himself to perform work other than as it was assigned to him and that he was quarrelsome with his supervisors. Claimant admitted that the incidents which led to the complaints did occur but he protested that there was an explanation for everything; that he did try to follow orders and that he was not quarrelsome. On the contrary, the claimant insisted that it was the **supervisors** who were riding him and creating the incidents. Several fellow workers called as witnesses by the claimant testified that he was a willing worker and not quarrelsome with them. They did not overhear the arguments with supervisors nor did they observe the events which led to the removal from service on May 22, 1972. They testified that the supervisors were fair with the men although one of supervisors habitually used profane language.

The Organization has submitted a number of prior Awards to support the position that decisions resulting in punitive action against **employees** may be reversed or the penalty reduced. The more significant ones are Third Division 10582 and 13881; Second Division 6174, 6277 and 6374. The Board has authority to disagree with a decision or to reduce the penalty in cases which justify such action.

Prior Awards were submitted by the Carrier to justify its decision and penalty in this case. They may be **summed** up as establishing the proposition

that it is not the function of the Board to determine conflicts in testimony nor will the Board reverse a decision where there is substantial evidence in the record to support it. Likewise, the Board will not disturb the penalty where there is not a clear showing of arbitrary and capricious action by the Carrier. This is set forth clearly in Third Division Awards 11324, 13674, 14391, 17492, 18708 and 19411. Prior Third Division Awards 17914 and 17998, add the conclusion, "that the imposition of discipline is within managerial discretion."

In Third Division Award 15828, petitioner claimed that he was being discriminated against. The Board's opinion stated that in such case, claimant should have employed the grievance machinery. It is alleged in the present case that at one point, the claimant said he would write up his supervisor who answered that he would help him write the letter. The claimant thereby demonstrated that he was aware of a remedy but did not pursue it.

We believe that the record of the testimony provided evidence sufficient to justify the decision. In view of the short and troublesome term of employment and the entries in the claimant's record during that time, the Carrier did not act arbitrarily, capriciously or in bad faith when it dismissed claimant.

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 Employee involved in this dispute are respectively Carrier and Employee 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 dismissal was proper and for just and sufficient cause.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of August 1973.