

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19925
Docket Number CL-20031

Irwin M. **Lieberman**, Referee

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

PARTIES TO DISPUTE: (

(George P. Baker, Richard C. Bond, **Jervis Langdon, Jr.**..
(and Willard **Wirtz**, Trustees of the Property of Penn
(Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (CL-7241)
that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of 30 **days' suspension** on G. W. Holtz, Clerk, Enola Diesel Shop, Enola, Pa., Harrisburg Division, Eastern Region.

(b) Claimant G. W. **Holtz's** record be cleared of the charges brought against him on August 6, 1971.

(c) Claimant G. W. Holtz be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant, an employee with 26 years service, was charged and found guilty of using abusive language to the Terminal Superintendent by telephone on August 5, 1971; he was assessed a thirty day suspension.

Petitioner argues that Claimant was misled as to the seriousness of the proceedings by the Hearing Officer in that he was told that "...**this** is an investigation only." We do not agree. Claimant had been a party to prior disciplinary investigations and there is nothing in the record to substantiate the argument.

It is contended further by Petitioner that Claimant was denied **due** process in that the Hearing Officer did not render the **judgement** and assess the discipline, but that these functions were performed by a Carrier official who was not present at the hearing. Since a credibility determination was made, it is argued that this deficiency significantly affected Claimant's right to a fair hearing. Carrier states, correctly insofar as the record indicates, that this issue was not raised on the property by the Organization, and hence cannot be considered. (Award 16348)

It is further urged by Petitioner that the hearing was not fair and impartial in that the Hearing Officer did not attempt to develop all the relevant facts. This contention was not amplified in any respect to indicate **what** the relevant acts were which were omitted. Although it would have been helpful to have certain matters raised by Claimant clarified, notably the language used by the Superintendent which allegedly was found offensive by Claimant, we are not persuaded that the brevity of the hearing materially affected Claimant's rights. We must note that Claimant chose not to be represented, chose not to discuss the offensive language, and did not make use of the opportunity to cross-examine his accuser.

The record of the investigation clearly shows that Claimant did use at least one mildly abusive phrase to the Superintendent in the telephone conversation alluded to. The record is not sufficiently clear with respect **to** the roughest language, since in addition to Claimant's denial, the assistant foreman present did not hear such language although he did hear the other phrase. Also, there is nothing in the record to shed light on the allegedly bad language used by the Superintendent although it was admittedly not directed against Claimant.

This Board cannot condone abusive language **or** other forms of in-subordinate behavior; in the past we have upheld dismissal for such offenses. In this **case** however, we do not think that the penalty imposed was appropriate; it was excessive. Under all the circumstances a thirty day suspension for the phrase: "...stick your head in the commode and flush it," was harsh and inappropriate. The record does not support a finding of any other misconduct. Therefore we shall reduce the penalty to a ten day suspension without pay.

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 penalty was excessive.

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The discipline shall be reduced to a ten day suspension;
Claimant shall be made whole for the additional time **out** of service in
conformity with Rule 6-A-1(h).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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(b) Claimant G. W. **Holtz's** record be cleared of the charges brought against him on **August 6**, 1971.

(c) Claimant G. W. **Holtz** be compensated for wage Loss sustained during the period out of service.

OPINION OF BOARD: Claimant, an employee with 26 years service, was charged and found guilty of using abusive language to the Terminal Superintendent by telephone on August 5, 1971; he was assessed a **thirty** day suspension.

Petitioner argues that Claimant was misled as to the seriousness of the proceedings by the Hearing Officer in that he was told that **"...this** is an investigation only." We do not agree. Claimant had been a party to prior disciplinary investigations and there is nothing in the record to substantiate the argument.

It is contended further by Petitioner that Claimant was denied **due** process in that the Hearing Officer did not render the **judgement** and assess the discipline, but that these functions were performed by a Carrier official who was **not** present at the hearing. Since a credibility determination was made, it is argued that this deficiency significantly affected Claimant's right to a fair hearing. Carrier states, correctly insofar as the record **indicates**, that this issue was not raised on the property by the Organization, and hence cannot be considered. (Award 16348)

It is further urged by Petitioner that the hearing was not fair and **impartial in** that the Hearing Officer did not attempt to develop all the relevant facts. This contention was not amplified in any respect to indicate what the relevant acts were which were omitted. Although it would have been helpful to have certain matters raised by Claimant clarified, notably the language used by the Superintendent which allegedly **was** found offensive by Claimant, we are not persuaded that the brevity of the hearing materially affected Claimant's rights. We **must** note that Claimant chose not **to** be represented, chose not to discuss the offensive language, and did not make use of the opportunity to cross-examine his accuser.

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This Board cannot condone abusive language or other forms of insubordinate behavior; in the past we have upheld dismissal for such offenses. In this case however, we do not think that the penalty imposed was appropriate; it was excessive. Under all the circumstances a thirty day suspension for the phrase : ". , . stick your head in the **commode** and flush it," was harsh and inappropriate. The record does not support a finding of any other misconduct. Therefore we shall reduce the penalty to a ten day suspension without pay.

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

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NATIONAL RAILROAD **ADJUSTMENT** BOARD

By Order of Third Division

ATTEST: *A.W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September **1973.**