

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21110
Docket Number CL-21210

James C. McBrearty, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-7886, that:

1. Carrier's **action in** the dismissal from service of Mr. **Raymond E. Eads, Shiller Park, Illinois was** unreasonable, arbitrary, **capricious and unjust.**

2. Mr. **Raymond E. Eads shall** have his record cleared of any **and all** charges that may have been **placed** against **him** because of **this case.**

3. Mr. **Raymond E. Eads shall** now be reinstated to the service of the **Carrier** with seniority **and other rights** unimpaired.

4. Mr. **Raymond E. Eads shall now** be compensated for **all** wages and other losses sustained account **this unwarranted** dismissal.

OPINION OF BOARD: Claimant was first employed by Carrier as a relief **Yard Clerk in the summer of 1971,** again in the **summer of 1972,** and still again **in the late spring of 1973,** establishing a seniority dating of **May 29, 1973.** At the time of his dismissal, **Claimant** held the position of Regular Relief Clerk **No. 4,** working from **4:00 PM to 12:00** midnight on Tuesdays, Wednesdays, **and Thursdays, and from 11:00 PM to 7:00 AM** on **Fridays and Saturdays,** with **assigned** rest days of Sundays and Mondays.

On **April 19, 1974** a **formal** investigation **was** held to ascertain Claimant's role in connection with **an** alleged **physical** altercation between himself **and** a female co-worker while on duty the **night** of March 2, 1974. **As a result of this investigation,** Claimant **was notified by Carrier** on **April 25, 1974,** that he **was** dismissed for his "improper **and** inexcusable conduct" toward a **co-worker.**

The scope of **our** review in discipline is limited. In the absence of discrimination, unfairness, or **capricious** and arbitrary action by the Carrier, we do **not** weigh the evidence to ascertain **if** our **decision** would be

the same as that reached by the Carrier. The policy of this Board in such a case is to examine the record to determine whether the decision of the Carrier is supported by substantial evidence (Award 18551).

Claimant argues that the record is replete with "disputed and refuted evidence" so that "the alleged evidence could not, by the remotest stretch of the imagination, be considered as competent or substantial."

In examining the record as a whole, the Board does find much conflicting testimony among the witnesses as to whether or not vulgar language was used by Claimant toward his female co-worker. There is also much contradiction among the witnesses as to exactly what physical actions or abuse Claimant took against his co-worker.

However, a close reading of the record reveals that Claimant himself admits,

"...I grabbed her by the shoulders,...shook her a little bit. She didn't seem too terribly upset... I...shook her hand and she started crying. Now I thought maybe I shook her hand a little too hard... She immediately sped to the washroom. Maybe I did hurt her... So I went in and I said, 'Hey, did I hurt you?'... As I stated in the previous Statement, she went into the washroom sobbing. At that minute I thought she might have been hurt. ...I went in there. ...I said, 'Hey, did I hurt you? I'm sorry if I hurt you. I didn't mean to squeeze your hand so tight. I was just trying to be friendly.' And she just kept on sobbing. Jimmy said we'd better leave. We shouldn't be in the bathroom. ...And the next day as Vicki will testify, she left without me being able to apologize because I thought I hurt her head. ...Mr. Taylor called me over the phone... And then I said, 'Oh, my God,' for shaking her like that...." (Tr., pp. 18-20)

James Tubbs, Inbound Receiving Clerk No. 2, who was present at the time of the above incident, testified:

- Q. Did you see Mr. Eads force Ms. Shefsky onto the table?
A. He didn't force her on the table.
Q. Did you see Mr. Eads slap her or rough her up any?
A. He didn't slap her, and I don't think he actually roughed her up.
Q. But did he grab hold of her?
A. Yes, in his usual manner. He usually does this to other women employees. It is his personal manner; it is his way.

Q. Did Mr. **Eads** follow Ms. Shefsky into the toilet, the ladies' washroom?

A. **Only after** he found out that he **had** hurt her. He wanted to **apologize**.

* * *

Q. Did **you** follow Mr. **Eads** and Ms. Shefsky into the washroom?

A. Yes, I did.

Q. Why did you do that?

A. I didn't think it **was** a good **thing** for Ray to go **in** there **because** he could get in trouble, I thought. It **was** for **Ray's** benefit actually.

* * *

Q. Can you **state what** the conversation was about?

A. I can corroborate Ms. **Shefsky's** story. . . I could see Ray walk in. **Vicki** came up to here with an advance list of the train. All of a sudden Ray comes in and Vicki was directly behind me. . . Ray came up and he grabbed her arm. She replied, "Oh, Ray," you know and she did say he seemed drunk, which I don't know if he was. He was laughing at first, and all of a sudden she started crying. I said, "Hold on, Ray. I think you are hurting her." So he stopped. Then he went and sat down. Then he came and asked me where did she go. "Well," I said, "I think you hurt her and she's in the bathroom. He went in there. So I followed and I said, "Ray, you'd better get out of here. It doesn't look too good." And then Wayne King was upstairs calling a crew. He came down and I said, "Wayne, I think Ray may have hurt Vicki a little. I think you had better talk to her." So Wayne goes there and talks to her. On the advice of Wayne, I told Vicki she had better go home because I didn't think she was in a condition because she was crying and kind of nervous. I guess she figured that Ray was going to hurt her. The same night I also advised Vicki if she were going to call an investigation she better do it. It could happen again, I don't know. I said that Ray maybe is a little sick or something. But I did advise her as to the fact. (Tr. pp. 8-10)

The foregoing testimony clearly establishes that Claimant did more than "shake hands in a friendly manner" with Vicki Shefsky.

Furthermore, L. A. Taylor, Manager of Terminal Services, testified that in 8 telephone conversation with Claimant on Monday, April 1, 1974, Claimant stated:

"I don't think I've done anything so wrong. If making a pass at a girl is so bad, every male in this office that night should be investigated." (Tr. p. 5)

In addition, Mr. Taylor testified that in 8 conversation he had with James Tubbs regarding the incident of March 2, Tubbs stated that Claimant had threatened him (Tubbs):

"I (Taylor) said, 'Jim, did he threaten you?' He (Tubbs) said, 'Sure he did. I'm afraid of that mother. I (Tubbs) told him (Eads) I know that group he hangs around with. They call themselves the Hell's something or other. I've seen them and Ray Together. They are a bad bunch. I stopped the whole thing you know. He (Eads) told me (Tubbs), 'I'll get you, you mother xxxxxx, my brother and I will get you. He is au enforcer.'" (Tr. p. 12)

Janet Plier, Assistant Agent, testified that on the same day (April 4) that Vicki and Mr. Taylor had their meeting about the incident on March 2, James Tubbs told her that Claimant had hit Vicki, although Tubbs did not specify when this happened. (Tr. p. 11)

While it is true that Tubbs at the hearing denied he made the above statements attributed to him by Taylor and Plier, and the stories told by Shefsky and Claimant differ markedly, nevertheless, it has long been held by this Board that its function does not extend to disturbing resolutions of questions of credibility when witnesses offer varying accounts at an investigation. Carrier chose to credit Shefsky's version of the incident, as well as the testimony of Taylor and Plier. Moreover, Shefsky's version was, to some extent, confirmed by Tubbs and even Claimant himself. We, therefore, cannot state, from a review of the record, that the credibility determination was arbitrary and/or capricious. Accordingly, we find that Carrier has presented substantive evidence, including Claimant's testimony, to establish that Claimant engaged in conduct unbecoming an employee, and entered into a physical altercation with Shefsky.

Such a physical altercation clearly violated Carrier's Safety Rule M for Station **Employees** and Ore Dock **Employees** which reads in pertinent part:

"Employees will not be retained in the service who are careless in the safety of others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious...."

Even in the absence of Rule M, it is inherent in the work relationship that personnel must conform to certain well-known, commonly accepted standards of reasonable conduct while on the job. Published rules and regulations are not necessary to inform an employee that misconduct such as fighting, altercations, and foul or obscene language may subject him to discipline or discharge. A railroad yard office is a place for the performance of work. While it is not a refined London tearoom, neither is it a place for conduct associated with a waterfront bar nor a relocated "Peyton Place". Uncontrolled, irresponsible outburst⁸ accompanied by physical or verbal assault cannot be tolerated.

Claimant testified that Vicki Shefsky "was snivelling about her job" (Tr. p. 18), and "started her massiw complaints" (Tr. p. 19). It was then that he "grabbed her by the shoulders...(and) shook her a little bit." (Tr. p. 19). Such behavior is not excusable because the Claimant was in an agitated emotional state brought on by Shefsky's alleged "snivelling" and "massive complaints", nor because Claimant may have been "intoxicated" and/or "sick" from allegedly drinking a gallon of wine before coming on duty. When an employee lacks the emotional stability and rational judgment to restrain himself from physical altercations, he also lacks the minimum qualifications to be retained as a member of the work force.

The precedent is 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. while the administration of disciplinary action should not be haphazard or capricious, it is clear that the imposition of discipline is within managerial discretion.

The record is conclusive that Claimant was guilty of conduct that simply cannot be condoned. We therefore have no alternative but to deny the claim.

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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 **Agreement** was not violated.

A W A R D

claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.