

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21233  
Docket Number CL-21029

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
( Robert W. Blanchette, Richard C. Bond  
( and John H. McCarthy, Trustees of  
( the Property of Penn Central Transportation  
( Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7747, 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 Edward Franks, Assistant Crew Dispatcher, Conway, Pennsylvania.

(b) Claimant Edward Franks's record be cleared of the charges brought against him on September 5, 1973.

(c) Claimant Edward Franks be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: On September 7, 1973, Claimant was instructed to attend an investigation concerning:

"Being insubordinate in that you refused to follow instructions of Trainmaster R. A. Bartoletti and became abusive in language in your conversation with him at approximately 7:40 P.M., Wednesday, September 5, 1973, during your tour of duty as Assistant Crew Dispatcher, 3:00 P.M. to 11:00 P.M., Conway, Pennsylvania."

Subsequent to investigation, Claimant was assessed a thirty (30) day suspension from service (with time held cut of service to apply), however, he was returned to service after losing ten (10) days of work (as a matter of "leniency") and the unserved portion was held in abeyance, to be served only if he committed an offense for which discipline was imposed.

We do not concur with Claimant's assertion that the Carrier failed to describe the "exact offense", nor do we agree that the lack of use of profanity has a bearing on the charge of "abusive language". Regardless of dictionary definitions, in the context of labor-management disputes, an employee may be considered to be abusive without regard to use of profanity.

At the investigation, Claimant made inquiry concerning his being held out of service **pending** the investigation; which inquiry was answered. In any event, that **matter** has not been pursued to this Board.

Carrier's contentions of **wrong** doing are expressed by the testimony of the Trainmaster:

"A. So about fifteen minutes later Mr. Fransko came up. I was on the phone at the time and he stood by **my** desk. When I got off the phone I got up and I started to tell him that when I **call down** there I didn't want him to be telling me that he is too busy to talk to me, and before I could get out **what** I wanted to tell him, he was hollering at me at the same time telling me that when he's busy he **don't** have to talk to me and he'll hang up on me anytime he wants to and I was telling him 'Hey, when I tell you that you're not going to hang up on me and I want to talk to you, that **is** what you're going to do or you're going to come off the job.' And he told me that he didn't care if I gave **him 60** days off and he didn't need to work and said he'd still hang up on me any time **that** he wanted to, so then I told him he was out of service. Then Mr. Fransko started down the steps, he got half-way down and I told him to **come** back, I wasn't finished with him, I wanted to give him an out-of-service notice the way it should be done, on paper, and he told me that he was out of **service** and he didn't have to talk to me and he walked out the door.

Q. Mr. Bartoletti, this conversation that transpired between you **and Mr. Fransko, were you alone** with Mr. **Fransko** in your office?

A. **No** sir, Mr. **Dripps** was the second trick Power Desk **Yardmaster.**"

Claimant's version is as follows:

"A. Yes **sir**. Mr. **Bartoletti** called me on the phone and was **asking** 'where are the jitney drivers that he needed one to run bills **from** the **IBM** room to **#4** hump. -1 told Mr. **Bartoletti** that I had no jitneys available **and** while we were talking two jitney drivers came **in the** room. I started to tell Mr. **Bartoletti** 'Wait a minute, I **think** there is a jitney driver here **now.**' Before I could finish this all I said was 'Wait a **minute**, I'--- and Mr. **Bartoletti** screamed at me over the phone telling me wait a minute, who in the hell do you **think** you are'.

"At this point him and I got into an argument over the way he was screaming at me over the phone. So I hung up on Mr. Bartoletti. At the same time Mr. D. P. DeLauter walked into the crew room and was hollering about the two jitney drivers that had just walked in. When I told Mr. D. P. DeLauter that they had just come in he turned around and started for the IBM room, at the same time calling me a 'little bastard', which I don't think is proper for a supervisor of the Penn Central to say to another employee. I have witnesses to this.

- Q. Mr. Franks, is that the extent of the conversation you had with Mr. Bartoletti?
- A. No sir, it was not. Mr. Bartoletti ordered me up to the Ivory Tower, which I immediately done. It wasn't 15 or 20 minutes, it was more like 5 minutes. When I arrived up in the Ivory Tower Mr. Bartoletti was talking on the telephone and telling someone that nobody is ever going to hang up on him. After he was done he proceeded to scream and holler like a maniac and I told him that any time anyone screams and curses over the phone at me that I would hang up on them. He in turn said that he was going to have me in for a trial and I did tell Mr. Bartoletti I didn't care if he did give me 60 days because I had done nothing wrong. He kept on screaming and hollering and I told him that I didn't have to take this from him over the phone or up in the office, and that I would hang up on him again if he screamed and cursed and hollered at me over the phone. Mr. Bartoletti then told me that I was out of service. I, in turn, left and went home. That is all I have to say."

Our review of the record leads us to conclude that the Yardmaster's testimony confirms that of the Trainmaster and we have noted that he testified that Claimant said "I'll hang up on You anytime I want."

It is well established that this board is not constituted to resolve conflicts of evidence. We find substantive evidence to support the finding of guilt and no showing of arbitrary or capricious conduct.

Even considering Claimant's long service and prior good record, we cannot conclude that the quantum of discipline is excessive.

**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;

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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. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 14th day **of** September 1976.