

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23990
Docket Number CL-24115

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Washington Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9479) that:

(a) The Carrier violated the Rules Agreement, effective July 1, 1972, particularly Article 18, when it assessed discipline of dismissal on C. J. Little, Baggage and Mail Handler, Washington, D.C., on July 2, 1980.

(b) Claimant Little to be restored to service, his record be cleared of the charges brought against him on June 24, 1980 and he be compensated for wage loss sustained in accordance with the provisions of Article 18(e).

OPINION OF BOARD: Claimant Little was employed in Carrier's service on November 13, 1976. On June 21, 1980 the Claimant was regularly assigned as Baggage and Mail Handler, Washington, D. C.

On June 24, 1980, Claimant Little was requested to appear for a hearing on June 30, 1980 in connection with a charge of insubordination on June 21, 1980. Claimant Little was charged with failure to follow instructions of his supervisor when his supervisor instructed Claimant to assist him in unloading a trailer at the truck dock. Claimant was also charged with shouting vulgar and profane remarks to his supervisor when Claimant was on the parking lot near Second Street gate on the same date.

Subsequent to the hearing Claimant Little was notified on July 2, 1980 that he was dismissed from service.

Under the date of July 14, 1980 Claimant appealed the discipline and the appeal was heard on August 11, 1980. On August 23, 1980 Claimant's appeal was denied.

The Carrier maintains that Assistant Foreman Jamison had every right to take the Claimant out of service and charge him with insubordination. The Carrier further maintains that Claimant should have obeyed the orders of Assistant Foreman Jamison and complained later if he had any reservations at all. (Third Division Awards 22909, 23010, 4449). X.

Assistant Foreman Jamison testified that he had requested Claimant to assist **him** in unloading 4 OTRs and that Claimant refused. He further testified that the Claimant understood his instructions.

The Carrier asserts that the Assistant Foreman later saw the Claimant at the Second Street Gate and Claimant began calling him "motherfuckers"; the Claimant then invited the Assistant Foreman to "come on out" and fight, and, if the Assistant Foreman went out there, he (Claimant) would "whip his ass". Assistant Foreman **Jamison** testified that he did not say anything to the Claimant to provoke the profanity.

X-2
Patrolman **Caporaletti** testified that he heard the Claimant shout **profanities** toward Assistant Foreman Jamison and then invite the Assistant Foreman out into the street. **Patrolman Caporaletti** further testified that the Assistant Foreman said nothing to the Claimant to provoke the profanities.

X-3
Foreman Warner testified that Assistant Foreman Jamison had called him at about 8:55 A.M. to state that the Claimant had failed to follow his instructions and that he (Jamison) consequently took the Claimant out of service. **Foreman Warner** further testified that the Claimant called 'him about an hour and a half later to say that he wanted to apologize to Assistant Foreman Jamison. Testimony of Foreman Warner indicates that he attempted to arrange for an apology; that he talked to Assistant Foreman Jamison who accepted the apology; that he called Investigator **Sapp** who said he had written the incident up and that there was nothing else (Warner) could do.

The Carrier maintains that the Claimant's apology indicates his guilt of insubordination.

The Carrier further maintains that there is nothing in Foreman Warner's testimony to indicate that a "fight bet" was the basis for the apology as the Claimant asserts.

The Carrier asserts that Claimant's testimony is contradictory, and therefore not credible. Claimant Little testified that he agreed to help unload after he picked up the Richmond mail, but also later testified that he had just brought up the Richmond mail a minute before.

V-14
The Carrier notes that the Claimant had been disciplined twice prior to his dismissal on July 2, 1980. On July 27, 1978 Claimant Lit*:- was disciplined for using abusive language toward his supervisor and for assaulting his supervisor by threatening to "get him" if the supervisor attempted to do anything about the Claimant's absenteeism and tardiness.

Organization contends that Patrolman Caporaletti's testimony only relates to alleged profanities and does not say anything about the alleged refusal to carry out an order.

Organization maintains that Patrolman Caporaletti's testimony suggests some disrespect but not insubordination. X-5

[Organization further maintains that Foreman Warner's testimony is hearsay as to the alleged insubordination and that the Carrier has produced no evidence of the alleged insubordination except the testimony of Foreman Jamison. The Organization maintains that this is not sufficient testimony to sustain the charge.] Claimant testified as follows: X-6

"Q: Did you tell Mr. Jamison that this would not be done by you?

A: No. I told him I would do it after I had finished doing my duties, which then was to take the mail from the Post Office over to the truck dock."

Organization contends that progressive discipline, reasonably applied, would not call for dismissal, based on the evidence provided. (Third Division Awards 19037 and 18016). X-

Upon a careful consideration of the record in this case, the Board concludes that discipline was warranted. However, in these circumstances the Board concluded that the discipline was excessive. In so doing, the Board notes that this is the third infraction by Claimant. Another infraction shall subject Claimant to possible dismissal. Claimant would also be well advised that in the future, he should "comply with an order and grieve later." This principle is well established in this industry and it has been adopted by the Board in a number of Awards. (Third Division Awards 22909, 23010 and 4449). X-

Accordingly we hold that Claimant shall be reinstated without backpay and with seniority and all other rights unimpaired. X-9

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 was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By order of **Third Division**

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th **day** of August 1982.

