

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24748
Docket Number MW-25098

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The dismissal of Messrs. M. W. Buckner and H. A. Brown effective April 26, 1982 was unwarranted and an abuse of justice and discretion by the Carrier (System Files MW-82-126/352-47-A and NW-82-137/353-17-A).

(2) The claimants shall be reinstated with seniority and all other rights unimpaired and they shall be compensated for all wage loss suffered."

OPINION OF BOARD: This claim arose out of an altercation on April 22, 1982, between two employees. The Claimants were dismissed from service by the Carrier, effective April 26, 1982. Their respective dismissal notices were revised on April 30, 1982 as set forth below:

Dismissal notice to Mr. Brown:

"This charge letter is in lieu of charge letter dated April 26, 1982 addressed to you by certified mail return receipt requested No. P 247 342 029 which you may disregard and substitute the following letter in its place:

On April 22, 1982 at approximately 6:00 p.m. while in the trailer park at Beaumont, Texas you and laborer M. W. Buckner commenced arguing and became hostile when you retrieved a shot gun and fired shots at laborer M. W. Buckner. This is in violation of Rules 801, 802 and 804 of the General Notice of the General Rules and Regulations effective April 1, 1978 which read in part as follows:

'Rule 801. Employees will not be retained in the service who are . . . quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism.'

'Rule 802. Courteous deportment is required of all employees in their dealings with . . . each other. Boisterous, profane or vulgar language is forbidden . . . Employees must not enter into altercations, scuffle, play practical jokes, engage in horseplay or wrestle . . .'

'Rule 804. Unless authorized by an officer of the company, employees are forbidden to have firearms, or any other dangerous weapon in their possession while on the property . . .'

Dismissal letter to Mr. Buckner:

"This charge letter is in lieu of charge letter dated April 26, 1982 addressed to you by certified mail return receipt requested No. P 247-342-030 which you may disregard and substitute the following letter in its place:

On April 22, 1982 at approximately 6:00 P.M. while in the trailer park at Beaumont, Texas you and Machine Operator H. A. Brown commenced arguing and became hostile and you struck **Machine** Operator H. A. Brown on the head with a pick comb. This is in violation of Rules 801 and 802 of the General Notice of the General Rules and Regulations effective April 1, 1978 which read in part as follows:

'Rule 801. Employees will not be retained in the service who are ... quarrelsome or otherwise vicious, or who conduct themselves in a manner which would subject the railroad to criticism ...'

'Rule 802. Courteous deportment is required of all employees in their dealing with . . . each other. Boisterous, profane or vulgar language is forbidden ... Employees must not enter into altercations, scuffle, play practical jokes, engage in horseplay or wrestle...'

For your violation of Rules 801 and 802 you are dismissed from the service of Southern Pacific Transportation Company effective April 26, 1982. Please arrange to return any company property you may have in your possession to District Manager, W. L. Franks, Beaumont, Texas."

Both Claimants requested hearings as provided for in the parties' Agreement. Their respective hearings were held June 2 and 3, 1982.

Claimant Brown was a machine operator on Extra Tie Gang 132 and Claimant Buckner was a laborer on Extra Gang 33. Following termination of their work on April 22, 1982, they attended a bar-b-que sponsored by L. Franks, District Manager in recognition of good work of the employees. The bar-b-que **was held** near the diesel shed during the afternoon following work. At about 5:00 P.M., some six employees were returning in a privately owned Van to their trailers which were on Company property. During this drive an argument began between the two Claimants.

A keg of beer had been provided at the party and, in addition, a stop was made by the van and at least one six-pack of beer was purchased. There was testimony that Claimant Brown's conduct indicated he had had too much to drink.

The argument was laced with profanity and became heated. At one point Claimant Brown threatened Mr. Buckner with a lo-inch knife. During this part of their **altercation** the side door of the van was opened and city police stopped the car to investigate. Apparently the police allowed the car to proceed. The

argument continued to the point that on arrival at their trailers the two Claimants had begun fighting. On getting out of the trailer the fighting intensified and Buckner struck **Brown** with a rake pick comb which had metal teeth. Two of the teeth stuck in Brown's head and had to be pulled out with a vise grip tool. Brown went to his car, returned with a shotgun and fired two shots at Buckner. Although criminal charges were lodged by both Claimants they were later dropped when police determined both had acted in self defense.

All of the above details of the altercation were developed through evidence of a number of fellow employees during the hearings. The evidence was not refuted and is conclusive as to the violation of the rules cited in Claimants' dismissal notices.

Fighting among employees cannot be tolerated by an employer. They endanger themselves as well as their fellow workers and this case is a good example of the peril involved. **What** began as a party in recognition of good work turned ugly by the combination of too much beer, short tempers and fighting that led to the use of deadly weapons. Luckily there were no fatalities. That, there were gross violations of safety rules is obvious. The evidence is strongly conclusive on this point. Both Claimants admitted their parts in the melee and their versions were verified by witnesses. The Carrier was clearly within its discretionary authority in terminating their services. The Claimants had a fair and impartial hearing. Their dismissals were just and reasonable and fully supported by the evidence.

There is a wealth of precedent in support of dismissal action for fighting, use of weapons and violation of safety rules. Thus, we cite a decision by Referee Mikrut, Third Division Award 23178 involving employees involved in altercations. In his decision he refers to a prior decision by Referee Sickles in Award 21068 as follows:

"Referee Sickles, in previously cited Award 21068, in a case involving a fact situation which closely parallels that which is involved herein, addressed the issue of the 'dual responsibility of participating in a physical altercation' and concluded as follows:

'**(W)ithout** unduly burdening this document with a lengthy recitation of the pertinent evidence of record, we are inclined to find that the actions of both employees showed a willingness to engage in rather severe conduct which was clearly contrary to the best interests of their employer. In every instance such as the one here under review, it is safe to say that one of the parties ignited the spark. But, it is equally safe to state that both parties had ample opportunity to restore a sense of propriety to the matter before it became totally uncontrollable.'
(Emphasis added by Board).

This Board finds that Referee Sickles' comments have particular relevance to this instant dispute, and for this reason this Board concludes that Claimant was guilty of the infraction as charged and that the penalty which was assessed was neither arbitrary nor capricious, and, therefore, shall remain undisturbed."

In the same vein we also quote from Referee Lieberman in another Third Division Award No. 19538:

"The sole issue in this case is whether or not the Carrier was arbitrary and capricious in assessing the discipline of dismissal. **The** record of the investigation is clear and unambiguous in that Claimant was responsible for provoking and engaging in a fight with another employee during working hours, on the premises, and in the presence of other employees. The record, including the investigative hearing, reveals no questions concerning the procedure; Claimant was afforded due process. The Carrier cannot and should not tolerate the conduct described above. This Board has held on a number of prior occasions that dismissal is in appropriate remedy in cases of employees fighting on duty (See Awards 11327, 13485, and 11170). We find that the discipline in this case was fully warranted and not too severe."

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

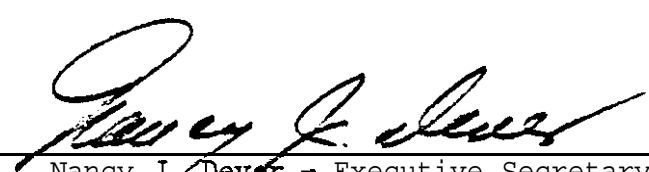
That the Agreement was not violated..

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of March, 1984.

