

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26066

Docket Number MW-26159

Peter R. Meyers, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company

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

1. The dismissal of Claimant G. J. Werner for allegedly 'making derogatory and threatening remarks to Foreman R. D. Marshall on July 8, 1983' was without just and sufficient cause and excessive (System File 4-15-11-15-55 /013-210-W).

2. The claimant's record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant entered the service of the Carrier on June 25, 1978. Since then, Claimant has been variously employed as a Painter, Carpenter, and Paint Foreman. On the date of the incident underlying this Claim, Claimant was employed as a Carpenter. On July 8, 1983, Claimant allegedly made derogatory and threatening remarks to a Section Foreman. On July 13, 1983, Claimant was formally suspended from service pending a Hearing, which originally was scheduled for August 4, 1983, but moved forward to July 25, 1983. Claimant was charged with violations of Regulations 700, 701, and 701(A), which provide;

"700. Employees will not be retained in the service who are careless of the safety of themselves or other, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subject to criticism and loss of good will, or who do not meet their personal obligations.

701. Courteous, orderly conduct is required of all employees. Boisterous, profane or vulgar language is forbidden.

701(A). Employees must not enter into altercation with any person, regardless of provocation, but will make note of the facts and report such incident in writing to their supervising officer."

As a result of the Hearing, Claimant was dismissed from service. The Organization then filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed all of the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding of guilt. Credible witnesses testified at the Hearing that they heard the Claimant tell Foreman Marshall that the Claimant would blind him or shoot him. Even the Claimant admitted that he was "excited", "tense", "hyper", and "harassed". The Claimant also admitted that he did ask the Foreman, "How would you like to lose your eyesight?" With those facts in evidence, there is no question that the Claimant was properly found guilty of making threatening remarks to the Foreman.

Once this Board finds that there is sufficient evidence in the record to find the Claimant guilty, we next turn our attention to the type of discipline imposed by the Carrier. This Board will not set aside discipline unless it finds that the Carrier's action was unreasonable, arbitrary, or capricious. Given the nature of this offense and the relative shortness of the Claimant's seniority, we cannot find that the discharge of the Claimant was unreasonable, arbitrary, or capricious, and therefore we will not set it aside.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1986.

