

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Fruit Growers Express Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10193) that:

1. The Company acted in an arbitrary, capricious, and unjust manner and in violation of Rule 50, among others, of the current schedule agreement, when it assessed discipline of nineteen (19) calendar days for the period May 21 through June 8, 1986, to Mr. E. R. Whitehead, Memphis, Tennessee.

2. The Company shall now be required to compensate Mr. Whitehead an amount equal to what he could have earned including, but not limited to, daily wages, overtime, and holiday pay, had he not been suspended. Further, the Company shall be required to clear Mr. Whitehead's record of any reference to this matter."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Fruit Growers Express (FGE) had a major contract with a plant which was secured for entrance and exit of all vehicles. Claimant's responsibilities required him to regularly enter and exit the plant. In the weeks preceding this dispute the Claimant found security procedures inconsistent and reported to FGE supervisors and plant officials that he was experiencing difficulties.

On May 18, 1986, Claimant attempted to enter the plant to carry out his responsibilities for FGE. The record establishes that he was stopped by Sergeant McKinney and some interaction occurred. Thereafter, the Sergeant discussed the interaction with the Industrial Relations Manager and filed a serious incident report.

By letter dated May 21, 1986, Claimant was suspended from service and charged with conduct unbecoming an employee, in the use of abusive and vulgar language and in causing damage to the relationship of FGE with the plant. Following the hearing, Claimant was found guilty of "conduct unbecoming an employee and acting in such a manner so as to damage FGE's reputation with an important customer." The charge of vulgarity was dropped.

There was no witness to the incident that occurred between the Claimant and Sergeant. The Sergeant did not testify at the hearing, but her written report was entered as evidence. The Industrial Relations Manager testified that the Sergeant came to him and "kept talking about the incident." He then asked the Sergeant to write up the report.

In discipline cases the Carrier must show substantial evidence that the discipline is merited and reasonable. Substantial evidence has been defined as such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229).

On the whole of this record, the Board finds Carrier has shown substantial evidence to draw the reasonable conclusion that Claimant is guilty. On the basis of the Claimant's own testimony of continued problems and the testimony of the Industrial Relations Manager, there is sufficient probative evidence that some incident involving the Claimant did occur. While the testimony of the Sergeant would have been preferable to her written report, the Board has allowed written statements where witnesses could not be compelled to testify and where no Agreement rights were violated (Third Division Award 8986; Second Division Award 6232).

In reviewing the transcript the Board took note of the fact that the senior Pinkerton guard also indicated to the Industrial Relations Manager that guards were having trouble with the Claimant just prior to this reported incident. The record indicates that the Claimant evidenced continuing irritation over inconsistent plant entry and exit procedures and indicated a prior "confrontation" on May 12 where he pressured the guard over security decisions.

Although Claimant's explanation of the incident at bar is markedly different from the guard's in both content and language, it is reasonable to conclude from the evidence of record that some type of incident did occur on May 18, 1986, between the Claimant and guard. The guard was sufficiently aggravated that she immediately discussed the issue with the Industrial Relations Manager and thereafter filed the serious incident report. The Board believes that the evidence of record supports the findings of the Hearing Officer as to the confrontation which showed "disregard for the guard's prerogative."

This Board does not weigh evidence, resolve conflicting testimony nor make credibility judgments (Third Division Awards 19798, 12074). It determines only whether there is substantial relevant evidence to support Carrier's findings of guilt. The probative evidence indicates that Claimant's conduct was not conducive to assure a good business relationship between FGE and this important customer. The evidence supports Carrier's findings of guilt.

As for the reasonableness of discipline, Claimant's assertions and witnesses testimony to his character are not taken lightly. We have here a long term employee with no prior discipline record. The character witnesses impress this Board with the excellence of the Claimant's employment. Nevertheless, the serious incident report initiated a major problem for FGE in that an important customer considered barring FGE employees from its property. Claimant's actions with the entrance procedures were proven to have been a cause of the problem. The Carrier considered the above-mentioned mitigating circumstances when it determined discipline (Third Division Award 16005). The Board finds no evidence of record to show Carrier's actions in these circumstances were unreasonable, arbitrary or capricious. Therefore, we have no basis to set aside the Carrier's action.

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 29th day of June 1989.