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NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29736  
Docket No. MW-30298  
93-3-92-3-20

The Third Division consisted of the regular members and in addition Referee Robert T. Simmelkjaer when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(CSX Transportation, Inc. (former Louisville  
(and Nashville Railroad Company)

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

- (1) The dismissal of Trackman T. A. Benefield in connection with a personal injury sustained on July 10, 1990 and for alleged '\*\*\* poor safety performance and your uncivil attitude toward a CSX Transportation Company Official \*\*\*' was without just and sufficient cause, capricious, on the basis of unproven charges and in violation of the Agreement [System File 13(10)(90)/12(90-802) LNR].
- (2) As a consequence of the violation referred to in Part (1) hereof, the Claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

By letter dated July 11, 1990, Carrier's Division Engineer advised Claimant that he was dismissed because of his poor safety performance and uncivil attitude toward a Production Gang Supervisor in connection with a personal injury he allegedly sustained to his left ankle at Irondale, Alabama, on July 10, 1990, while retrieving tie plates as related to his assigned duties on Timbering and Surfacing Unit 5M73.

In accordance with Rule 27, Claimant requested a formal Investigation of the incident, because he felt he was unfairly treated. Accordingly, under date of July 20, 1990, the Division Engineer scheduled the Investigation which, following several postponements, was ultimately held on August 8, 1990. By letter dated August 31, 1990, the Division Engineer reaffirmed his earlier decision that Claimant be dismissed.

The Organization's September 1990 appeal raised a threshold question as the propriety of Claimant being dismissed as a CSXT employee pursuant to the terms of the Agreement applicable to the former Louisville & Nashville Railroad since Claimant was working on the former Atlantic Coast Line property at the time of the injury. The Organization also challenged the Carrier on the basis his first injury was not his fault. Lastly, the Organization contended that Claimant denied behaving in an uncivil manner toward his Supervisor during a preliminary investigation conducted immediately following his alleged injury on July 10, 1990.

The Organization's threshold argument was previously rejected in Public Law Board No. 3794, Award 18, which reads, in relevant part, as follows:

"Seaboard Coast Line and the L&N are part of the Seaboard System Railroad. Accordingly, when an employee has been duly dismissed under the terms of the agreement of the L&N, his employment relationship with the Seaboard System is also severed and the rights he may have had with any other craft or member of the System are dissolved. That principle is well established. See Third Division Awards 24604, 12104, 9974."

Without unduly burdening this document with a lengthy recitation of the pertinent evidence of record, suffice it to say that we find the Carrier's decision that Claimant was guilty as charged is supported by substantial evidence. We note with particular interest the following colloquy between the Hearing Officer and one of Claimant's co-workers:

"Mr. Brown, let me try to clarify your testimony a little further. Did Mr. Benefield specifically tell you on the morning of July 10th, prior to starting any work, that his ankle was injured?

Yes. I can't lie. Before we started work, before we even got to the work site and got up to the machine, he was already limping."

We also note that Claimant did not refute the Production Gang Supervisor's testimony to the effect that on the way to the Hospital he apologized for his uncivil behavior in the field. In this regard, the Board held in Third Division Award 22055:

"We enunciated in Award 21299 a general principle that we feel is equally pertinent to these events, namely, that uncontrolled outbursts accompanied by physical or, as in this case, verbal, assault cannot be countenanced. The Board stated therein, 'Such behavior is not excusable because the offender is in an agitated emotional state. When an employe lacks the emotional stability and rational judgement to restrain himself from outbursts, he also lacks the minimum qualifications to be retained as a member of the work force.'"

Finally, to the extent Claimant's assertion of provocation by the Supervisor conflicts with the Supervisor's denial, the issue of credibility arises. In such cases, the Board has held that it is incumbent upon the Hearing Officer to weigh the evidence and render credibility judgments. In Second Division Award 11265, this view was stated as follows:

"In cases such as the instant matter, where there is a factual dispute, this Board has consistently held that it will not substitute its judgment for that of the Hearing Officer, absent a clear showing of arbitrary, capricious or unreasonable action on the part of the Hearing Officer. The Hearing Officer was present and able to observe the conduct and demeanor of the witnesses and there is substantial evidence in the record to support the Hearing Officer's determination. Accordingly, this Board will not substitute its judgment for that of the Hearing Officer."

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The penalty assessed was not arbitrary or unreasonable given the totality of the circumstances. The discharge is therefore upheld.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Nancy J. Dever  
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 12th day of August 1993.