

Award No. 4350

Docket No. CL-4323

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees:

1. That Mr. James F. Eisenmann, former warehouse foreman, Charleston, S. C. Agency shall be returned to the service with seniority rights unimpaired.

2. That Mr. J. F. Eisenmann shall be paid for all monetary loss because of being dismissed from service effective October 25, 1947.

OPINION OF BOARD: Claimant, James F. Eisenmann, a warehouse foreman, was found guilty of insubordination and bodily striking Carrier's Freight Agent at Charleston and dismissed from service. The record in this docket reveals that the proceedings on the property conformed with the requirements of the Agreement insofar as investigation, hearing and appeal are concerned and there was substantial evidence upon which to find the Claimant guilty as charged. As a matter of fact, on the hearing he admitted striking the Freight Agent. Hence, in this opinion we shall not analyze the evidence upon which the finding of guilt was based, but shall devote ourselves to consideration of whether or not the discipline assessed by the Carrier was arbitrarily or capriciously imposed.

Striking a superior is a very serious offense. Where guilt of such a charge is proven this Board should be extremely loath to interfere in any way with the quantum of punishment meted out by a carrier. In the instant case evidence of provocation by continued needling and the use of profanity directed at the Claimant was introduced on the hearing by the Claimant but denied by the Freight Agent. There was also evidence that the employees in service at the station viewed the Freight Agent as being far from a model supervisor for on their complaints the General Chairman had previously conferred with the Superintendent with a view to investigating him pursuant to Rule 32 of the Agreement. This, however, does not in our opinion justify an employee in the use of brute force against a superior. To condone such action would be to breed anarchy and the loss of respect for that authority which must be reposed in the carrier if the railroads are to be run effectively and safely.

In the record in Eisenmann's own statement there is evidence that there was a certain amount of deliberation in the assault, for prior thereto he

requested the Agent to remove his glasses and upon his failure to do so he (Eisenmann) took them off. It further appears that, although Eisenmann had been an employe of the Carrier since 1919, his record was spotty and he had been disciplined on previous occasions.

We do not find such mitigating circumstances in the record as would justify us in disturbing the action of the Carrier in this instance. It follows that the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of March, 1949.