

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold H. Weston, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4825) that:

(1) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when it arbitrarily dismissed Mr. Alfred Berry from service on September 23, 1959; and,

(2) Mr. Alfred Berry shall now be restored to service with all rights unimpaired and compensated for all wage loss from September 7, 1959, the date he was suspended from service pending investigation, to the date he is restored to service.

OPINION OF BOARD: This controversy concerns Claimant's dismissal on September 23, 1959, for allegedly violating on September 7, 1959, Carrier's Rules 801 and 802 which proscribe "quarrelsome, or otherwise vicious" conduct or "boisterous, profane or vulgar language". Rule 802 also provides that "Employees must not enter into an altercation, but will report the facts to their immediate supervisor".

It is undisputed that on September 7, 1959, Claimant was involved in a heated argument with a timekeeper-clerk. Neither of the two employees directly concerned was on duty at the time but the incident occurred on the Carrier's premises in the presence of employees at work. An investigation was thereafter held on due notice to Claimant of the charges against him and he was dismissed for his part in the altercation.

Quite apart from the testimony of the two principals to the altercation, there is substantial, competent and credible evidence that Claimant at the time in question used boisterous, profane and vulgar language and physically struck the timekeeper-clerk. Although Claimant denies the charges, we do not regard this a suitable situation in which to upset either the Carrier's findings that he violated its rules by his part in the argument or the discipline it has decided is appropriate under the circumstances. See Award 9046.

There is nothing in the investigation that appears to be unfair or to constitute a major defect. While it would be better practice to have the office conducting the investigation render and announce the Carrier's decision, the failure to do so in this case is not a reversible error. The question was not raised on the property or in the submissions to the Board and the parties should have had the benefit of discussion and negotiation regarding that point, particularly since the applicable Agreement does not contain a provision that was included in an earlier agreement that plainly requires the decision to be made by the officer holding the investigation. The elimination of that language by the contracting parties makes for considerable doubt regarding their intent and the question should, at the very least, have been explored by Petitioner in its submission if it desired this Board to consider it. The situation is therefore somewhat different than that considered by the Board in Awards 6087, 7088 and 8020.

Our review of the record convinces us that we can not properly require Carrier to reinstate the Claimant, whatever may be the situation regarding its failure to discipline the timekeeper-clerk. See Award 8488.

The claim will accordingly be denied.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 28th day of April, 1961.