



Award No. 14349

Docket No. CL-15746

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

MONON RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL 5819) that:

1. The Carrier violated the current working Agreement by dismissing Mr. John F. Davis, said dismissal being arbitrary, unjust, and in abuse of its discretion by inflicting this drastic and excessive penalty of dismissal, and,
2. The Carrier shall clear his record of dismissal and he shall be restored to service with full seniority and all other rights restored, and
3. The Carrier shall be required to compensate Mr. John F. Davis for all monetary losses sustained for work and/or compensation he would have been entitled to and/or perform, had he not been improperly dismissed.

OPINION OF BOARD: On November 18, 1964, John F. Davis, an employe with seniority from February 9, 1960, was party to an investigation on the following charge:

"You are charged with failure to properly perform your duties as Shops Deliveryman at LaFayette Shops and your belligerent and quarrelsome attitude when questioned by your supervisor as to why the duties were not performed on Thursday, November 5, 1964."

On November 30, 1964, Davis was dismissed from service giving rise to the instant dispute.

The Organization contends that the Carrier failed to present evidence to sustain the charge against Claimant; that other employes could be held equally responsible for delay in delivery; and that Davis was provoked into the verbal attack against his supervisors. In addition, it argues that even if a disciplinary action was justified, in view of Davis' previously clean record, dismissal was an excessive penalty.

The Carrier asserts that there was clear evidence of neglect of duty, of insubordination and of unbecoming conduct, and that in view of the serious-

ness of Davis' infraction the dismissal penalty was justified.

The facts in this case are undisputed. Regardless of whether any other employees were equally responsible for delivery of the disputed materials there was no reason for Claimant to neglect his assigned duties or to become argumentative, profane or threatening in discussions with his supervisors. Even though the meeting with his supervisors took place on the Claimant's lunch period, he was required to discuss the matter with civility and in good taste. His threatening bodily harm was the antithesis of such good conduct and is deserving of disciplinary action.

As was noted by Referee Guthrie in Award 5821:

"A review of the record in this case shows that a penalty was in order since the guilt of claimant was established with respect to certain of the charges. There remains for consideration the question of whether dismissal from service was the appropriate penalty in view of the nature of the offenses.

In view of the facts and circumstances disclosed by the record, a penalty as severe as dismissal from the service was drastic and arbitrary * * *

Davis had been with the Carrier for four years at the time of the incident. During that time he had had a good work record unblemished by any disciplinary warnings or penalties. Considering the Claimants record of satisfactory service we are of the opinion that a ten day suspension for an offense of this nature would be the maximum which could be imposed and still be within the limits of discretion. Anything in excess would be arbitrary or capricious. Accordingly the claim will be sustained granting full seniority and vacation rights but with reinstatement effective December 10, 1964.

Davis is entitled to such reinstatement less interim earnings and in accord with his seniority and furlough rights.

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 Employees involved in this dispute are respectfully 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

The discipline assessed was too harsh and capriciously imposed.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966.

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