

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20263  
Docket Number CL-20403

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7358) that:

(a) The Carrier violated the terms of the Clerks' Agreement when it dismissed Mr. Russell Safford from service.

(b) Claimant Russell Safford shall now be restored to service with seniority and all other rights unimpaired and paid for all losses sustained by reason of his wrongful dismissal.

OPINION OF BOARD: Claimant was dismissed from service on January 29, 1971 after having been found guilty of "insubordination and conduct unbecoming an employee...".

The record of the investigation indicates, without dissent from Petitioner, that Claimant was afforded a fair and impartial hearing. The incident involved herein concerns Claimants alleged use of abusive and profane language to a supervisor and his alleged refusal to follow instructions of two supervisors. While Petitioner denies that Claimant was insubordinate, there is substantial evidence in the record to support Carrier's conclusion. Furthermore, there is no denial that Claimant was abusive. Petitioner asserts that the insubordination was non-existent since after the initial refusal to carry out the assigned work Claimant did indeed perform the assignment, he also attempted to apologize after abusing the supervisor. We conclude on the basis of the record before us that Carrier's conclusion with respect to the charge was adequately supported.

A major thrust of the Organization's position is that the discipline imposed was excessive. It is contended that the profanity was relatively minor and that in view of the attempted apology and since the alleged insubordination was negated as well by the completion of the assigned task the infraction should not have incurred the maximum penalty. Although we recognize that there are degrees of insubordination and abuse, we do not concur in Petitioner's argument. Taken alone we may well have found that the penalty imposed was excessive for the incident involved herein. However it is well established that Carrier may properly consider

the employee's service record as a whole in determining the measure of discipline. Considering the poor record of Claimant in the less than four years of service we do not find that the discipline imposed was inappropriate; we do not find any basis for the contention that Carrier's imposition of dismissal was an abuse of managerial discretion.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1974.