

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21290  
Docket Number CL-21092

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
( Robert W. Blanchette, Richard C. Bond  
( and John H. McArthur, Trustees of the  
( Property of Penn Central Transportation  
( Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7745) that:

(a) The Carrier violated the Rules Agreement, effective September 15, 1957, particularly Rule 21, when it assessed discipline of dismissal, later reduced to suspension with time off duty to apply, on E. J. Woodill, Engine Dispatcher, Boston, Massachusetts.

(b) Claimant E. J. Woodill be reimbursed for all time lost and record of discipline removed from his record.

(c) Claimant E. J. Woodill receive interest at 6% per annum for lost wages.

OPINION OF BOARD: This dispute involves the disciplining of Claimant for alleged use of profanity in the course of his duties as an engine dispatcher. Claimant was charged with using profane and vulgar language in a telephone call at 4:45 A.M. when he called Locomotive Engineer F. R. Eck for an assignment that morning, September 16, 1973.

Petitioner argues that there was the uncorroborated testimony of Engineer Eck versus Claimant's denial - which was insufficient evidence to warrant Carrier's conclusion in this case. The Organization also objects to the introduction of Claimant's prior record into the proceedings herein and alleges such introduction was prejudicial. It is also contended that Carrier, by changing the discipline from dismissal to suspension, admitted to having acted discriminatorily.

With respect to credibility, the parties are undoubtedly aware that the Board cannot resolve conflicts in testimony as that function is properly reserved to the hearing officer at the investigation. Further, the argument concerning the paucity of evidence, in view of the two witnesses is not convincing. It would be difficult for there to be more than two witnesses to a phone conversation; in this case the possible testimony of Eck's wife would be at best marginal. There is well established precedent

for this Board to accept conclusions reached in discipline disputes based on the testimony of one witness: see, for example, Awards 14356, 15713 and 20602.

On the issue of the introduction of the past record of Claimant, there is no indication that the finding of guilt was predicated on that information; such information is properly considered in the determination of the quantum of discipline to be imposed (see Awards 16315, 20653, 20602, 20997 among others). It is also well settled that Carrier's offer of reinstatement does not carry with it the implication or admission that the original discipline was improper or discriminatory.

The Board has in the past upheld the right of Carrier to dismiss an employe for the use of profane language (see Awards 16948, 17515 and others). In this case the language was beyond the pale of "shop talk" and was clearly offensive. Was the ultimate discipline of four months suspension justified? Although we would not deem dismissal as appropriate, and we might well have viewed a lesser penalty as fitting, we cannot find fault with Carrier based on Claimant's past record of discipline for closely related infractions. The conclusion, then, is that the Claim must 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1976.