

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21556
Docket Number MW-21620

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employes
(
(Southern Pacific Transportation Company
(Texas and Louisiana Lines

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Laborer Clovis Alexander on April 18, 1975 was without just and sufficient cause (System File No. MW-75-36).

(2) The charge be stricken from the claimant's personal record and he shall be allowed pay for all time lost as per Agreement Rule 14(f).

OPINION OF BOARD: By letter dated April 18, 1975, Claimant, a Laborer with approximately 4½ years service with the Carrier, was dismissed from service as a result of a verbal altercation he had with his Foreman; failure to comply with work instructions issued by his Foreman; and for being quarrelsome. Following a hearing held relative to the foregoing charge, Carrier affirmed their discharge of Claimant due to his alleged violation of Rule 801 of General Regulations of Rules and Regulations for Maintenance of Way and Structures. On July 14, 1975, Claimant was returned to service without pay for time lost but without prejudice to the Organization's right to progress the instant claim for the compensation that Claimant lost between April 18, 1975 and July 14, 1975.

The evidence adduced at Claimant's hearing was somewhat conflicting. Gang Foreman Johnson testified that on April 18, 1975 he instructed the Claimant to come down off the car he was standing on and pick up scrap burrs as other members of the gang were doing, but that Claimant refused. Johnson further claimed that Claimant immediately began cussing him. Johnson denied cussing at the Claimant. Johnson's testimony was corroborated by Overhead Crane Operator Pilkenton who declared that he heard Johnson give instructions to Claimant but that Claimant refused to comply. He further stated that he did not hear Johnson using profanity, though he did hear Claimant cussing Johnson.

Claimant denied that he refused to abide by Johnson's orders, and asserted that he picked up scrap burrs on April 18, 1975 as instructed. However, he conceded that he had indeed cussed Johnson but only after Johnson had cussed him first. Claimant's testimony was corroborated by his cousin, Caffery Alexander and by Laborer Joe Hall.

From the foregoing, one can easily discern that the evidence adduced at Claimant's hearing was contradictory. Yet we conclude that there was substantial evidence produced to support Carrier's allegation that Claimant had been insubordinate and quarrelsome on April 18, 1975 in violation of Rule 801. We must reiterate that it is not the province of this Board to weigh the evidence adduced nor to resolve any conflict in the testimony of the respective witnesses. Rather, we are limited to an examination of the evidence in order to ascertain therefrom whether Carrier's decision was based on substantial evidence. Applying that test to the record before us, this Board finds that there was, in fact, substantial evidence to support the charges preferred against Claimant.

While the Organization asserts that the 90 day suspension given Claimant was not justified, we must respectfully disagree. Insubordination is generally recognized in this industry as a dismissible offense. Moreover, this is not the first time that Claimant has been found insubordinate. On July 27, 1974 a similar incident occurred between Claimant and Foreman Johnson. At that time Carrier warned Claimant that if he could not follow the directions of his authorized supervisors "severe disciplinary action will be taken." Accordingly, Claimant was duly warned that any further insubordination would not be tolerated. In the light of this, we do not consider a 90 day suspension excessive or unreasonable.

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 respectively Carrier and Employees 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. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.