

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22326
Docket Number MW-22293

Abraham Weiss, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Louisville and Nashville Railroad Company

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

(1) The dismissal of Rail Lubricator Attendant C. L. Price for alleged 'uncivil and insubordinate' conduct on April 14, 1976 was without just and sufficient cause, unwarranted, on the basis of unproven charges and in violation of the Agreement [System File 1-5 (25)/D-106527 E-306-4/.

(2) Rail Lubricator Attendant C. L. Price be reinstated with seniority and all other rights unimpaired and he be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was dismissed for alleged "uncivil and insubordinate" conduct. The events giving rise to the charge can be summarized as follows:

About 10 minutes before Claimant's starting time, Claimant picked up the phone while Roadmaster Nutt was talking on the phone with foreman Underwood. Carrier maintains that Claimant interfered with the Roadmaster's instructions to the foreman and told the Roadmaster to "shut up." Claimant insists that he was told to shut his mouth and mind his own business.

Petitioner holds that at the time of the incident, Claimant was off duty acting in his capacity as local chairman of the representative Organization, and hence could not have been insubordinate to Roadmaster Nutt.

At the hearing, Claimant stated "I don't recall telling Mr. Nutt to shut up, but I do not deny it."

Roadmaster Nutt, on the other hand, testified that Claimant injected himself in the ongoing telephone conversation he was holding with foreman Underwood and that Claimant proceeded to countermand his instructions to the foreman. When Nutt instructed Underwood to

do as he was told, Claimant then told Nutt to shut up. Foreman Underwood and several other witnesses who were also on the line at the time supported Nutt's statement that Claimant told him to shut up. A second foreman, responding to questioning by Claimant's representative, testified that he did not hear Mr. Nutt tell Claimant to shut up first.

Our reading of the record leads us to conclude that Claimant did inject himself, without warrant, into the telephone conversation between the Roadmaster and the Foreman while the Roadmaster was laying out the day's instructions and that, based on the corroborating statements of four people, did tell the Roadmaster to "shut up." Such a remark, under the circumstances, was uncalled for and not within his province.

Claimant was guilty, but the offense was not of such a severe or serious nature as to warrant dismissal from service.

Claimant has been out of service for about two and one half years. It is our judgment that this time out of service constitutes sufficient penalty for the offense.

We believe that the penalty of permanent dismissal was excessive. We therefore direct that Claimant be returned to service but without compensation for time lost.

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 discipline was excessive.

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Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1979.