

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22915
Docket Number MW-22649

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(Terminal Railroad Association of St. Louis

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

(1) The charge that Machine Operator Larry Buneta was insubordinate to Track Supervisor Don Stogner 'at or about 2:30 P.M., September 12, 1977' was unproven and unmistakably disproven at the investigation held on September 27, 1977, as a consequence of which

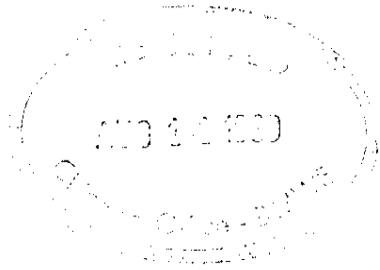
(2) The suspension of 'fourteen (14) days without pay' which was imposed upon Claimant Buneta was improper and in violation of Rule 24(d) /System File TRRA 1977-29/.

(3) The charge of insubordination shall be stricken from the record and Claimant Buneta shall be reimbursed for any monetary loss suffered by him."

OPINION OF BOARD: Claimant had five and one-half years of service with the Carrier when he was removed on September 12, 1977 for insubordination. A hearing was held on September 27, 1977 and by letter dated September 29, 1977 Claimant was informed that the charge was proven and a fourteen (14) day suspension was assessed. Claimant returned to work on Monday, October 3, 1977.

The undisputed facts concerning the incident are that, on September 12, 1977 Claimant was assigned as a truck driver to System Gang #9. Sometime during his shift Claimant entered a nearby building to use the rest room. Track Supervisor Donald Stogner observed Claimant entering the building and after approximately one-half hour proceeded to the building to check on Claimant. As Supervisor Stogner approached the building, the Claimant appeared outside and soon thereafter Claimant began using profane language.

The record contains conflicting testimony regarding the question of whether Supervisor Stogner was told that Claimant was feeling ill and whether Stogner provoked Claimant's profane outburst with indiscreet language of his own. In any event, after the heated exchange of words, Claimant was removed from service pending a hearing.



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Docket Number MW-22649

Page 2

As a preliminary matter we wish to point out that Claimant's removal from service was inappropriate in light of the circumstances. While some awards go further, it is generally accepted by this Board that a Carrier is justified in removing an employe from service only when it appears that the employe is a hazard to his own safety and the safety of others; when his misconduct was gross; or, when failure to take the employe out of service would impede the Carrier in the proper and effective conduct of its business (See Award No. 21447, Referee Nicholas H. Zumas).

While the instant charge was not sufficiently serious to warrant Claimant's removal from service pending a hearing, the 14-day suspension was neither arbitrary nor unreasonable in light of Claimant's insubordinate use of profanity. Although the supervisor's actions may have been provoking, this Board cannot condone Claimant's responses. The language used was profane and it was not demonstrated that it was shop language accepted by supervision.

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 Employes involved in this dispute are respectively Carrier and Employes 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 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 22nd day of July 1980.