

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22940  
Docket Number MW-23035

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(The Kansas City Southern Railway Company

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

(1) The dismissal of Laborer C. L. Ford was excessive and wholly disproportionate to the offense with which charged (Carrier's File 013.31-192).

(2) Laborer C. L. Ford shall be returned to service with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: C. L. Ford, claimant, was a track laborer on Extra Gang 491 when he was discharged from service on January 31, 1978, for insubordination. A hearing was held into the matter. As a result, Carrier upheld his discharge. The stenographic record of that hearing has been made a part of the record of this case. A review of it reveals that claimant was not denied any of his substantive procedural rights and that a full and fair hearing into the matter was held. Claimant was not present at the hearing, even though he was properly notified of its time and place. He was represented by a union official.

A review of the record clearly indicates that claimant was guilty of insubordination and using vulgar language to his foreman and assistant foreman. This action, by itself, is grounds for severe discipline, up to and including dismissal from service. When this incident is viewed in light of claimant's past work record, it is clear that discharge from service is the appropriate penalty.

In just two years of employment with Carrier, claimant has been reprimanded, suspended, dismissed, and reinstated on a leniency basis and finally dismissed a second time for insubordination. Carrier has made every effort in an attempt to make a worthwhile employe out of claimant. Its efforts have been exhausted. It is the opinion of this Board that Carrier was justified in discharging claimant.

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 15th day of August 1980.