

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23040
Docket Number MW-23188

A. Robert Lowry, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Maintenance of Way Employes
(St. Louis-San Francisco Railway Company

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

- (1) The dismissal of Equipment Mechanics B. E. Hood and J. L. Wright was unreasonable, arbitrary and without just and sufficient cause (System File B-1232).
- (2) The claimants shall now be allowed the benefits prescribed in Agreement Rule 9(c)."

OPINION OF BOARD: This claim involves an alleged altercation between Division Engineer B. M. Lutzenberger and Messrs. B. E. Hood and J. L. Wright, the claimants, both employed as Traveling Maintenance of Equipment Mechanics, on the evening of October 4, 1978.

Both claimants were charged with violation of Rule 175 and the first paragraph of Rule 176 of Carrier's Rules for the Maintenance of Way and Structures, and were dismissed from service on October 7, 1978. Formal investigation was held on November 2, 1978. A copy of the transcript of the hearing was made a part of the record.

Rule 175 and the first paragraph of Rule 176 read as follows:

"175. Civil, mannerly deportment is required of all employees in their dealings with the public, their subordinates, and each other. Boisterous, profane or vulgar language is forbidden. Courtesy and attention to patrons is required. Employees must not enter into altercations with any person, no matter what provocation may be given, but will make note of the facts and report to their immediate superior."

"176. Employees who are negligent or indifferent to duty, insubordinate, dishonest, immoral, quarrelsome, insolent or otherwise vicious, or who conduct themselves and handle their personal obligations in such a way that the railway will be subject to criticism and loss of good will, will not be retained in the service."

The record clearly shows that an altercation occurred on October 4, 1978, in the restaurant of the Pine Forest Motor Lodge and in the parking lot between Division Engineer Lutzenberger and the claimants.

The testimony of both claimants confirmed the altercation and their part in it. Carrier witnesses also confirmed claimants' involvement in the altercation, their use of vulgar and profane language as well as threatening Lutzenberger verbally and with a wooden stick or club one inch in diameter and 24 inches long. The Board finds the evidence produced at the investigation shows claimants were in violation of Carrier's Rules 175 and 176.

Claimants contend the altercation was provoked by Lutzenberger. If claimants' contentions were correct they failed to conduct themselves in accordance with provisions of the last sentence of Rule 175, quoted above, and it is too late now for retribution.

The record shows claimants were reinstated on May 21, 1979, without back pay with the right of the Organization to press this claim.

The Board finds that the record contains sufficient probative, credible and competent evidence to support the Carrier's action. There is no proper basis for the Board to interfere with the discipline imposed.

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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *AW Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.