

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23348
Docket Number MW-23373

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Seaboard Coast Line Railroad Company

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

(1) The dismissal of Bridgeman C. J. Randolph for alleged violation of Safety Rules Nos. 17, 18 and 26 was without just and sufficient cause and wholly disproportionate to such a charge (System File C-4(13)-CJR/12-39(78-28) J).

(2) Bridgeman C. J. Randolph shall be reinstated with seniority and all other rights unimpaired, his personal record cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, with about seven years of service, was employed as a bridgeman on Bridge Gang 8731. The gang was headquartered in camp cars, and, at the time of the occurrence giving rise to the dispute herein, was stationed at Carrier's Lakeland Shops. The cars were parked on tracks adjacent to the Engine House at Lakeland.

At approximately 5:00 P. M., June 15, 1978, after the force had completed its week's work, the claimant was using the shop water and air to wash his personal vehicle. When this was noticed by shop supervisory personnel, the Shop Foreman and General Foreman shut the water off and advised claimant that he could not use shop water to wash his personal vehicle; that shop employees were not allowed to do so; and that the claimant would not be permitted to do so. The Carrier contends that claimant took violent exceptions to the advice and used gross, obscene and totally uncalled for language to the General Foreman, as a result of which he was advised by the Master Carpenter on June 19, 1978, that he was held out of service pending a formal investigation of the incident that occurred on June 15, 1978.

On June 20, 1978, the claimant was charged by the Division Engineer:

"Referring to Mr. J. L. Hartley's letter of June 20, 1978, concerning your actions at approximately 5:00 P. M., on Thursday, June 15, same resulting in charges having to do with Safety Rules for Engineering and Maintenance of Way Employees. These charges are:

"No. 17: Profane, indecent or abusive language is prohibited.

"No. 18: ...that portion which reads: '...vicious or uncivil conduct...will subject the offender to dismissal.'

"No. 26: ...that portion which reads: 'Unauthorized employees and others not having legitimate Company business to transact are prohibited from entering or loitering about railroad ...yards...shops...and other properties. Persons so observed must be reported to supervisor.'

"A hearing is set for 10 A.M., Wednesday, June 28, 1978, in my office at 4020 Adamo Drive, Tampa, Florida, to determine your responsibility in this matter, at which time your personal record will be reviewed. You may have any witnesses or representatives present allowed under the terms of the agreement; however, their notification and attendance will be your responsibility."

The investigation or hearing was held as scheduled, as a result of which claimant was dismissed from the service. A copy of the transcript of the investigation has been made a part of the record. A careful review of the record shows that none of claimant's substantive procedural rights was violated. Claimant was present throughout the investigation and was represented. The investigation was conducted in a fair and impartial manner.

There was substantial evidence adduced at the investigation in support of the charges against the claimant. Claimant clearly used profane, indecent and foul language addressed to the General Foreman. The discipline imposed by the Carrier was not arbitrary, capricious or in bad faith. 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 Employee involved in this dispute are respectively Carrier and Employee 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: *A. W. Paulsen*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.