

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23984
Docket Number MW-24060

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation

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

(1) The dismissal of Trackman W. E. Coles for alleged insubordination and allegedly threatening bodily harm to his supervisor was without just and sufficient cause, arbitrary and wholly disproportionate to the charge leveled against him (System Docket No. 477).

(2) Trackman W. E. Coles shall be reinstated with all seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant, W. E. Coles, entered the service of the Carrier on May 11, 1976 and on April 10, 1979, was employed as a Trackman at Enola, Pennsylvania. On May 9, 1979, the Claimant was notified to attend a trial in connection with the charge that on April 20, 1979 at 1:45 PM he was insubordinate in not following the direct order given to him by Supervisor Track G. T. Gates in Enola Yards, Pennsylvania. The Claimant was also charged with threatening bodily harm to his Supervisor G. T. Gates at approximately 1:45 PM on April 20, 1979, in Enola Yards.

Subsequent to a hearing on May 16, 1979, the Claimant was notified that he was disciplined by "Dismissal in all Capacities" for the above-alleged offenses. The discipline decision was appealed to the Director-Labor Relations. In a letter dated August 17, 1979, Claimant's appeal was denied. A special conference was held in connection with the matter on February 24, 1980, after which the Senior Director - Labor Relations reaffirmed denial in a letter dated April 22, 1980.

The Carrier maintains that the Claimant's dismissal was fully warranted, in view of the seriousness of the offense. According to the testimony of Supervisor Gates on April 20, 1979 at 1:45 PM he gave Mr. Coles a direct order. Mr. Cole did not obey the direct order of Supervisor Gates. Supervisor Gates further testified as follows:

"Q: Mr. Gates, did Mr. Coles threaten you with bodily harm?

A: Yes he did.

"Q: Mr. Gates, would you please tell us in your own words what happened?

A: We were putting timber in the back ladder at the East bound Hump. I told Mr. Coles to get the claw bar and start pulling spikes. He pulled some spikes and just stood there leaning against the bar. I then told him to get the fork and start cribbing out between the ties. I walked away and came back and he was standing in the same position not cribbing, not doing anything. I told him again. At such time he told me he wished to mark off, he wanted his time stopped and he wanted to take me off railroad property and rearrange me. He stated he wished to flatten my face and widen my asshole. He became extremely loud and threatening. At such time I informed him he was out of service."

The record indicates that one half hour to 45 minutes lapsed between the time Supervisor Gates gave Mr. Cole a direct order and when he came back. The testimony of Supervisor Gates was corroborated by the testimony of Foreman Schmitt.

The Carrier maintains that the testimony of Supervisor Gates and Foreman Myers and Schmitt clearly establish that Claimant was insubordinate and also threatened to inflict bodily harm on Supervisor Gates. The Carrier further maintains that the Claimant's past discipline record indicates that five (5) months prior to this incident Claimant became engaged in an altercation with a co-worker. As a result of this incident the Claimant was disciplined by 60 days' suspension for striking and causing injury to the co-worker. The Carrier introduced the Claimant's past discipline record during the trial proceedings. Carrier maintains that the National Railroad Adjustment Board has upheld the discipline including discharge of employees for insubordination, Second Division Awards 4672, 4782, 5167, 1687, 1575 and 4136.

The Organization maintains that the Claimant is not at total fault. The Organization asserts that the incident was, in part, precipitated by Supervisor Gates raising his voice at Mr. Coles. The Organization also maintains that standard procedure is usually for supervisors to transmit orders through foreman. Organization also maintains that an employee's past discipline record is not permitted to be read into the record under standard procedures.

The Board has carefully considered the record in this matter and concludes that Mr. Coles did engage in an act of insubordination on April 20, 1979. The Board also concludes that the Claimant did threaten Supervisor Gates with bodily harm. The Board further concludes that the record did not support the claim that Supervisor Gates by possibly raising his voice is a sufficiently mitigating factor to justify the Claimant's actions.

The Board disagrees with the Organization's objection to the introduction of the Claimant's past discipline record in the trial proceeding. Employee's past discipline record is normally used in applying the concept of progressive discipline. In the instant matter, the Claimant had been suspended for sixty (60) days for inflicting bodily harm to another employee. Under these circumstances the Board concludes that the Carrier's actions were supported by substantial evidence on the record.

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemaria Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August 1982.