NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23987
THIRD DIVISION Docket Number MW-24075

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(St. Louis Southwestern Railway Company

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

(1) The dismissal of Extra Gang Laborer E. A. Harris for alleged 'violation of Rules 801 and 802' was without just and sufficient cause and wholly disproportionate to the charge leveled against him (System File MW-80-21-CB/281-51-A).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to his dismissal, Claimant E. A. Harris had been employed by the Carrier approximately 9 months and 3 days, having been initially employed June 4, 1979. Claimant Harris was dismissed by letter dated February 7, 1980 in connection with the charge that he entered into an altercation with another employe on February 6, 1980 in violation of Rules 801 and 802.

In response to Claimant's request for a formal hearing dated February 12, 1980, a formal hearing was held on March 4, 1980. Subsequent to the hearing the Claimant was informed by letter dated March 11, 1980, that the Claimant was found guilty as charged and that dismissal was justified.

Acting Foreman of Extra Gang No. 44 D. Williams testified as follows:

"Q: Can you just tell me in your words just what you saw take place?

A: In the starting of it, at the North end of the yard I had two men filling in. Michael Richardson, he threw his shovel and hat down and went for Eric Harris. He yelled to him, "Black Boy, I'm not your flunkie. You go to work or go home." He went up to him and taken the shovel out of his hand and threw it away and told him he could go home cause he didn't need him on the railroad anyway. So they went on back to work. We tied up and come in. At 4:00 I told them they could go home. Michael pulled his hat off and hung it up on the post and I walked away from the car and lost sight on them and I turned to come back and get my keys and I saw Richardson running and Eric, he was chasing after him. So he had a distance on Eric's, so Eric's threw something

"(a rock or something) and Davenport said it hit his car. So he opened up his turtle shell and got his gun. So I come to them and asked them "What was the matter?" Michael said he went over to Eric's car to talk to him and Eric's he come out with the stick and hit him on his hand. That's it."

Mr. J. D. Harris, a laborer on Extra Gang No. 44, testified that he saw Richardson throw his hat down, went to Eric Harris and took his shovel. Mr. Richardson threw the shovel in the bushes and told Harris to get to work or either go home at approximately 2:30 P.M.

Mr. J. L. Owens, laborer, corroborated the testimony of J. D. Harris and D. Williams that Richardson and E. Harris were arguing and that Richardson threw the shovel. Mr. Owens also corroborated Acting Foreman Williams' testimony that later that day at approximately 4:00 P.M. Claimant E. Harris started chasing Richardson and threw a rock at Richardson. He further testified that Davenport took a shotgun out of his car after the rock was thrown.

Laborer Richardson testified that he started arguing with Claimant Harris because he felt that the Claimant was not doing his share of the work. He further testified that later in the same day, Claimant Harris started chasing him and threw a rock at him.

Laborer Davenport's testimony corroborates the testimony of Richardson, Owens, Williams and J. D. Harris.

The Carrier maintains that the previously mentioned testimony shows that the Claimant and Mr. Richardson had an argument during working hours and they started arguing again after hours on the property which resulted in an altercation. This incident could have had very serious consequences when a third employe brought out a shotgun.

The Carrier maintains that the Claimant's behavior was improper for an employe. (Second Division Awards 6173, 1659, 2191, 2344; Third Division Awards 19538, 20314 and 17269).

The Carrier asserts that the discipline assessed the Claimant was not too harsh given the Claimant's previous record. Claimant Harris has had several letters regarding being tardy.

The Claimant maintains that testimony indicates that the Claimant did not engage in any altercation at approximately 2:30 P.M. on February 6, 1980. Extra Gang Laborer Richardson testified that after his words with the Claimant, the Claimant went back to work. This testimony is corroborated by the testimony of Laborer J. D. Harris, Laborer Owens and Laborer Davenport. The Claimant maintains that nothing else occurred other than the reasonable exchange of words which were warranted under the circumstances.

In regards to the second incident, the Claimant contends that what took place occurred after working hours and did not interfere with the Claimant's work. The Claimant further maintains that he was provoked by insulting, abusive and racial remarks by Extra Gang Laborer Richardson and therefore the Supreme penalty of dismissal was not warranted. (Second Division Award 4098).

Upon careful consideration of the record the Board concludes that there is substantial evidence on the record to support the charge. The Board, once again, states that such conduct is not appropriate and cannot be condoned. Employes should not engage in such conduct whether provoked or unprovoked, Incidents such as this should be conveyed to foremen, supervisors or other individuals in positions of authority instead of engaging in self help. In these circumstances, the Board denies the claim.

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

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 Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

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