

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24229
Docket Number MW-23995

Robert E. Peterson, 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 Randy Moore for allegedly 'being insubordinate to Assistant Roadmaster L. R. Stout' on April 9, 1980 was without just and sufficient cause and wholly disproportionate to the offense with which charged (Carrier's File 013.31-232).

(2) Laborer Randy Moore shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered including holiday pay."

OPINION OF BOARD: The general issue here is whether under the facts of record and under principles long applied by this Division in discipline cases, Carrier had just and proper cause for dismissing Claimant or whether some lesser penalty would be sufficient for the offense committed.

While working as a member of a large System Steel Gang consisting of 40 to 45 workers, Claimant, an extra gang laborer, used profane and vulgar language toward a Carrier supervisor in violation of Carrier's Rule "N". At the time of this act of insubordination, Claimant had but seven months of service and had previously been issued a warning concerning his failure to report for duty at the prescribed time.

On the basis of the record, it cannot be properly said that the Carrier lacked substantial and compelling reason for deciding that Claimant's actions were so serious and unwarranted that they merited imposition of the dismissal penalty. In this regard, we have held in a long line of awards that we will not upset the penalty meted out by Carrier unless it clearly appears that the disciplinary action was discriminatory, unjust, unreasonable or arbitrary so as to constitute an abuse of sound discretion. In this case we find that the discipline imposed was commensurate with the offense, especially in view of Claimant's limited service and the fact his remarks were sufficiently loud to be heard by at least one other witness.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.