

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24761  
Docket Number MW-24971

Paul C. Carter, Referee

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

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

(1) The dismissal of Trackman R. B. McCoy for alleged violation of Rule '17' and '18' on April 1 and 2, 1981 was without just and sufficient cause and an abuse of justice and discretion by the Carrier (System File C-4(13)-RBM/12-39(81-1019) G).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Prior to his dismissal, claimant was employed by the Carrier as a trackman, assigned to T&S Gang 9059, which, at the time, was assigned to camp cars which were located in Kaplan Yard, in West Jacksonville, Fla. During the night of March 31, 1981, a switch engine, coupling to cars in the track on which the camp cars were located, shoved a cut of cars into the camp cars, causing what the Carrier termed minor injuries to several employees sleeping in the cars, including the claimant. The following morning the employees who claimed to have been injured were taken to what is described as the Primary Care Unit for medical examination, to determine the extent of injuries, if any, to the employees.

The Carrier states that when the employees arrived at the Primary Care Unit, the claimant was the first to be seen by medical personnel; that while claimant was waiting for the other employees to be examined, he became very loud and boisterous in the emergency room, downgrading the physicians and the treatment that he had received; the Roadmaster was present and considering that claimant was creating a disturbance, he asked the claimant to step outside where claimant was requested to refrain from the loud talking and general degradation of the Company. The Carrier goes on to state that after returning to the emergency room, claimant again began his loud and offensive remarks, at which time he was asked to step outside by the Assistant Division Engineer who advised him that his remarks were out of order and entirely uncalled for. Upon completion of the examinations by the doctors at the Primary Care Unit, the employees were released for light duty, returned to the camp cars and assigned light duty around the cars.

The Carrier also contends that on the morning of April 2, 1981, claimant was instructed by the Roadmaster to perform what he considered light duty away from the camp cars; that claimant became belligerent, refused to perform the work as instructed by the Roadmaster and directed derogatory remarks to the Roadmaster, resulting in his suspension from service by the Roadmaster.

On April 9, 1981, claimant was charged by the Roadmaster:

"This refers to incidents that occurred at the Emergency and Primary Care Center and at my office at about 7:50 AM, Thursday, April 2, 1981, at which time I removed you from service account of you being abusive and insubordinate. For your actions of April 1 and 2, I am herewith charging you with violating that portion of Safety Rule No. 17 regarding abusive language, and portions of Safety Rule No. 18 dealing with disloyalty, dishonesty, vicious and uncivil conduct, insubordination and making false statements. The rules referred to are the Seaboard Coast Line Railroad Company's Safety Rules for Engineering and Maintenance of Way Employees effective September 1, 1967.

A formal hearing will be conducted by Division Engineer E. S. Laws and he will advise you as to the time, date and place."

The rules referred to in the letter of charge read:

"17. Profane, indecent or abusive language is prohibited."

"18. Disloyalty, dishonesty, desertion, intemperance, immorality, vicious or uncivil conduct, insubordination, sleeping on duty, incompetency, making false statements, or concealing facts concerning matters under investigation, will subject the offender to dismissal."

By agreement, the time limit for conducting the hearing was waived and it was conducted on June 1, 1981. The hearing was quite lengthy. A copy of the transcript has been made part of the record. The hearing was conducted in a fair and impartial manner. Claimant was present throughout the hearing and was represented.

We have carefully reviewed the transcript of the hearing and find substantial evidence that claimant's conduct in the waiting room of the Primary Care Unit on the morning of April 1 was rude, loud and very critical of the Company, its treatment of employees, and critical of the medical care provided. His actions in this respect constituted disloyalty, which usually justifies dismissal. In Second Division Award No. 8930, the Board held:

"The Carrier has also called attention that in contracts of employment there is an implied condition of loyalty by an employee to his employer. The Carrier cites the text of 56 Corpus Juris Secundum, Page 430, Master and Servant, reading:

'One who asserts an interest, or performs acts adverse or disloyal to his employer commits a breach of implied condition of the contract of employment which may warrant discharge.'

This Board adheres to this principle. See Third Division Awards 2496, 10930, 11911, 15932, 19811, 23151 and Award 1 of Public Law Board No. 2787."

There was also substantial evidence adduced at the hearing to support the charge of insubordination in connection with claimant's reactions to the instructions of the Roadmaster as to work to be performed on April 2, 1981. Insubordination also usually results in dismissal.

We recognize that there were conflicts in the evidence given at the hearing; however, it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses.

We will not disturb the discipline imposed by the Carrier.

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:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 13th day of April, 1984.