

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25134  
Docket Number MS-25270

M. David Vaughn, Referee

(Louis J. Griffin

(Henry L. Simmons

PARTIES TO DISPUTE:

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(The Kansas City Southern Railway Company

STATEMENT OF CLAIM:

"Louis J. Griffin and Henry L. Simmons were unjustly docked three hours of pay, received reprimand letters placed in our file and were then dismissed from service for refusing to work in inclement weather and for threatening bodily harm to the Roadmaster which the formal investigation did not prove."

OPINION OF BOARD: Claimant Louis J. Griffin was employed by the Carrier as a Machine Operator. Claimant Henry L. Simmons was employed by the Carrier as a Tamper Operator. On July 7, 1982, Claimants Griffin and Simmons were assigned to an extra gang which was working in bad weather. Claimants took shelter together in a camp car for a period of approximately two hours from the start of their shift. When they were found by a Carrier official and instructed to begin work, they failed to do so, citing the weather and a Carrier directive restricting work in inclement weather under some circumstances. When the official insisted that they begin work, Claimants argued with the official.

Following notice and an investigatory hearing, the Carrier dismissed Claimants for violation of Carrier's General Notice and Carrier's Rules B, E, N, and Q, which read in relevant parts as follows:

From General Notice: "To enter or remain in the service is an assurance of willingness to observe the rules, and a failure or refusal to observe the rules justifies a removal from service."

"Rule B - They must have a proper understanding and obey all rules and instructions applicable to their duties."

"Rule E - Employees must render every assistance in their power in carrying out the rules and instructions. Courteous co-operation between employees is required for proper functioning under the rules and instructions."

"Rule N - Employees who are...insubordinate...quarrelsome or otherwise vicious, or who do not conduct themselves in such a way that their railroad will not be subject to criticism or loss of good will, will not be retained in the service."

"Rule Q - Employees must report for duty at the prescribed time and place, remain at their post of duty, and devote themselves exclusively to their duties during their tour of duty. They must not absent themselves from their employment...without proper authority. \* \* \*

The record demonstrates that Claimants were on duty but were not carrying out their assignments, that they were instructed to do so by an official of the Carrier, that they objected, became argumentative, and physically threatened the official.

Claimants assert that the Carrier's bulletin concerning work in bad weather made the official's order improper. Based on a review of the bulletin, the Board disagrees, but even if it is assumed that the official's order contravened the general policy, Claimants' appropriate response, in the absence of a direct and imminent threat to their personal safety, was to obey the instruction and later, if necessary, pursue a claim. There is no indication from the record that the danger to Claimants was direct and imminent.

Claimants argue that the Carrier's official was, in fact, the instigator of the argument and that he attempted to provoke a physical confrontation with them. There is considerable evidence in the record to support the Carrier's conclusion that the Claimants initiated the argument and threatened the official. To the extent that there is direct conflict between the testimony of the Carrier witnesses and the Claimants, the Board declines to overturn the credibility determinations made by the Carrier.

Claimants argue further that their dismissals were pretextual, the result of Claimant Griffin's service as President of his local union and of Claimant Simmons' then-pending lawsuit against the Carrier. Such accusations, if at all supported by the record, would warrant close review of the Carrier's actions. However, there is no evidence in the record here of such motivation on the part of the Carrier, and the Board will not act on mere speculation.

There is, in short, sufficient evidence in the record to support the dismissal of Claimants. The Board concludes that the Carrier's actions were not arbitrary and that the penalties imposed were not excessive or an abuse of discretion. Accordingly, the Board declines to overturn the actions dismissing Claimants and denies the claims.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

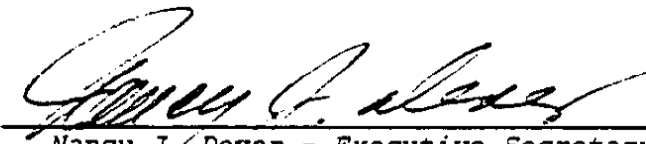
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1984.