

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(National Railroad Passenger Corporation  
( (Amtrak) - other than Northeast Corridor

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

(1) The dismissal of B&B Foreman T. Conners for alleged violation of Rules 'E', 'F-2' and 'F-7' on January 31, 1986 was excessive and unreasonable (Carrier's File CR-BMWE-99).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant commenced service with the Carrier on November 30, 1976, and had continuous railroad service since June, 1954. He was employed as a Foreman in the Bridge and Building Department at the Carrier's New Orleans, Louisiana passenger station.

By letter dated February 6, 1986, Claimant was notified to attend an Investigation on February 13, 1986, for his alleged violation of Rules E, F-2, and F-7 on January 31, 1986, in connection with charges he discriminated against another employee by directing racial slurs on numerous occasions and threatened said employee with a handgun which was found in his personal vehicle on Carrier property by Amtrak Police.

Following the Investigation, by notice dated February 19, 1986, Claimant was dismissed from service. Aside from the instant discipline, Claimant's record shows no prior disciplinary matters.

Our function is to review the record to determine if substantial evidence exists to support the charges against Claimant. Third Division Award 21020. If such substantial evidence exists, then we cannot disturb the Carrier's penalty unless it appears that the Carrier's action was discriminatory, unjust, unreasonable, capricious or arbitrary so as to constitute an abuse of discretion. Fourth Division Award 3490. There is no real dispute concerning the facts in this matter.

In response to the Hearing Officer's question as to whether Claimant had used any racial slurs toward the involved fellow employee, Claimant responded:

"When you say racial slurs, I am not going to deny, I think racial slurs was both it wasn't just a one way street. I think we both used it against one another."

Claimant also admitted at the trial having stated:

"...Herman if you touch me with that lining bar you had better make sure you kill me, because if you don't if I get to my truck and get my gun you are a dead man."

When the Hearing Officer asked Claimant if he felt that he had been given a fair and impartial investigation, Claimant responded:

"The only thing I feel dissatisfied with, yes I felt that the investigation came off smoothly, and every charge that was pressed on me was accurate, but the allegations and accusations that were made by Brown I deny, everything is false that's a set up job."

With respect to the direction of racial slurs to a fellow employee, the Board held in Second Division Award 7451:

"The Carrier's operations are severely hampered by self-provoked dis-harmony among its employees; accusations and name-calling, if tolerated by the Carrier, can lead to far more serious consequences for the employees involved and thus for the Carrier. The Carrier acted against Williams only after a thorough hearing of the facts. No impropriety can be found in the decision to avoid future serious consequences by dismissing the Claimant from service."

With regard to the possession of firearms on a Carrier's property, this Board held in Third Division Award 25016:

"A number of awards upholding the dismissal of employees for being in the possession of firearms while on Company property, have been issued by this Division. We find that in the instant case, there is no proper basis to interfere with the discipline assessed by the Carrier and the claim is denied."

Obviously Claimant's misconduct went far beyond mere possession of a firearm on Carrier's property.

In Third Division Award 21323, involving the discharge of an employee with 39 years of service, the Board stated:

"On many occasions this Board has held that years of service alone does not mitigate improper conduct by employees and this case is no exception. While we are reluctant to sustain the ultimate penalty of dismissal for long service employees, it cannot be said that the decision of Carrier in this case was arbitrary or capricious; the Carrier possesses considerable latitude in the imposition of discipline and under the circumstances herein we are not inclined to substitute our judgment for that of Carrier (see Awards 9045, 18006 and many others)."

The reasoning in the above Awards guides us in this case. We cannot conclude on the basis of the record that the Carrier's assessment of discharge as discipline was excessive, unjust, arbitrary or capricious. No mitigating circumstances exist in this matter to require a different result.

It is regrettable that an employee of such long service must be discharged. However, the fact remains that Claimant's misconduct, albeit his first, was of grave seriousness and could have seriously endangered other employees. Claimant's length of service alone, under the circumstances of this case, cannot negate or mitigate his misconduct. Claimant must be presumed to have foreseen the consequences of his acts, as evidenced by his testimony at the trial.

Claimant was a Foreman, in a position responsible for the health and safety of his subordinates. Employees qualified for and trained in special responsibilities of their trade or profession must expect to be held to the level of performance and demeanor consonant with their work. Fourth Division Award 3591. The Claimant failed to meet those standards in this case.


In any event, by letter dated July 16, 1986, Claimant tendered his resignation, noting he was applying for his retirement annuity.

The discipline imposed was supported by the record and the Claim is denied.

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 30th day of August 1988.