

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 32964
Docket No. MW-33641
98-3-97-3-115

The Third Division consisted of the regular members and in addition Referee Gerald E. Wallin when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Union Pacific Railroad Company (former Oklahoma,
(Kansas and Texas Railroad Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Truck Driver S. K. Sharkey for his alleged insubordination in that he did not comply with previous instructions concerning quarrelsome behavior and the use of abusive language towards fellow workers on January 24 and 25, 1996 was without just and sufficient cause, based on an unproven charge and excessive punishment (System File MW-96-24-OKT/960276 OKT).
- (2) As a consequence of the aforesaid violation, Truck Driver S. K. Sharkey shall now be allowed the remedy prescribed in Article 23, Section 6.”

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 employee 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 were given due notice of hearing thereon.

The record in this dispute reveals a history of stormy relations between Claimant and one of his co-workers. Therefore, on January 19, 1996, Carrier officials held a meeting with the two employees to discuss the application and impact of the Carrier's Rules regarding verbally abusive behavior.

Carrier officials received reports that Claimant engaged in such conduct again on January 24-25, 1996. Following an Investigation held on January 31, Claimant was dismissed from further service with the Carrier.

The Organization challenged the discipline on both procedural and substantive grounds. Among its procedural objections is the contention that Claimant did not receive a fair and impartial Hearing in that he was pre-judged. Additionally, the Organization asserted that the testimony of Carrier witnesses was collaborative and rehearsed.

Our review of the Hearing transcript reveals no support for the Organization's procedural objections. We find no impropriety in the handling of the Hearing.

The record also contains substantial evidence in support of the charges. Not only did Claimant repeatedly use abusive language, he did so after being asked to stop. Moreover, he did so after clear and specific warnings to the contrary at the January 19, 1996 meeting. Given Claimant's demonstrated unwillingness to restrain himself from engaging in such misconduct, despite the warning, we do not find the Carrier's decision to terminate his employment to be unreasonable.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 23rd day of November 1998.