

Award No. 26
Case No. 47

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

"(1) The dismissal of Track Repairman Alphonse Williams was without just and sufficient cause, unwarranted and on the basis of unproven charges. (2) Track Repairman Alphonse Williams shall be afforded the remedy prescribed in the first paragraph of Rule 27(f)."

FINDINGS:

Claimant, a trackman with less than one year's service (June 7, 1977 to May 12, 1978), became irate when Foreman Morrison addressed him as "Boy" in saying, "Boy, how about getting a jack bar and help my men pull some jacks." He was working at the time with other men under Mr. Morrison's supervision, although his regularly assigned foreman was Mr. Henderson who was at-

tending to other duties nearby.

According to the testimony of both foremen, claimant kept complaining about the use of "Boy" instead of his name and did not perform his work. When he continued in that vein for a considerable time, Foreman Henderson approached him and told him to get back to work and that he was unnecessarily wasting too much time. Mr. Henderson testified that claimant replied that it was none of his business and to stay out of it. When, according to Mr. Henderson, he reminded claimant that it was his responsibility as foreman to see to it that his orders were complied with and attempted to persuade claimant to get on with the work, claimant told him that "you can take your jive talk to hell." Williams was then relieved from duty. He was subsequently discharged on July 7, 1978, after a hearing was conducted by Carrier in this matter on June 9.

Claimant was offered reinstatement on a leniency basis on July 27, 1978. The offer was declined by General Chairman Coffey. On December 21, 1978 claimant advised Carrier, in reply to a call from Carrier, that he was interested in returning to work and attended a meeting that day in the company offices with Mr. Coffey and Carrier representatives. A physical examination was scheduled for him by Carrier on December 22 and he was told he could return to duty on December 26, a Tuesday, if he signed a letter regarding his reinstatement and passed his physical. He replied that he wanted to have his attorney approve the letter before signing it and would return in an hour.

Claimant did not return to Carrier's offices that day or thereafter communicate with the company.

In line with well established principles and practices of railroad adjustment and public law boards, we will accept the above related facts, although in some respects they are controverted by claimant, since they are supported by substantial credible evidence. As an appellate board, we are not in a position to observe and hear the witnesses or to resolve issues of credibility.

While the record does not establish that the foremen intended to offend or embarrass claimant and the word "Boy" in and of itself is not opprobrious, we can appreciate Mr. Williams' feelings in the matter when it is considered realistically and in a historical light. It is understandable that he needed time to assert and collect himself. The problem with his position is that he took too much time and unnecessarily exacerbated the situation. His actions may well have relieved his feelings, but are not helpful in insulating him from disciplinary action.

We will not substitute our judgment for that of Carrier insofar as its conclusion that substantial discipline is warranted. The nature of the foreman's remarks and claimant's reaction do not call for a contrary result. However, such extreme disciplinary action as dismissal is not appropriate in these cir-

