

PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 18

CASE NO. 25

<u>PARTIES</u>)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
<u>TO</u>)	and
<u>DISPUTE</u>)	FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT
OF CLAIM:

1. That the Carrier violated the Rules Agreement when on June 14, 1982 they dismissed Trackman S. W. O'Neal, said dismissal being capricious, arbitrary and unjust.
2. That Claimant S. W. O'Neal be restored to the service of the Carrier with seniority, vacation and all other rights unimpaired and, additionally, be compensated for loss of earnings suffered account his wrongful discharge.

FINDINGS:

By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

In notice dated June 14, 1982, Claimant Trackman S. W. O'Neal was dismissed from the services of the Fort Worth and Denver Railway Company "in violation of Rules 563, 564 and 576, of the Burlington Northern Safety Rules, for insubordination to Assistant Section Foreman, J. E. Persons, on May 19, 1982, as evidenced by formal investigation" on May 28, 1982 at Fort Worth, Texas.

General Rules 563, 564, and 576 read:

"563. Burlington Northern service demands the faithful, intelligent, courteous and safe discharge of duty. Courteous, orderly conduct is required of all employees. Boisterous, profane, sexist or vulgar language is forbidden. Employees must not enter into altercation with any person, regardless of provocation, but will make note of the facts and report such incident in writing to their immediate supervisor.

"564. Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, or who conduct themselves in such a manner that the railroad will be subjected to criticism and loss of good will."

"576. Employees must comply with instructions from proper authority."

Claimant O'Neal admits that he told his Supervisor, Assistant Foreman Persons, "to get f-----" after being instructed to load tools on the truck on May 19, 1982, at about 8:30 AM. Mr. Persons testified: "O'Neal told me to get f-----. I told O'Neal I did not have time for his foolishness, that I would have to talk to someone about his language. That was it." Persons testified, in response to the question, "He did put the tools on the truck as you originally instructed?", "Yes." (Tr. p. 4).

The evidence of record is insufficient to establish any refusal by Claimant O'Neal to follow instructions.

The National Railroad Adjustment Board, Third Division, has upheld the right of a Carrier to dismiss an employee for the use of vulgar and profane language abusive to the employee's supervisor. See Awards 16948, 17692, 19698, 19760. Whether language is to be deemed vulgar, profane, or disrespectful or abusive to the employee's supervisor, however, must be determined in the light of the standard of language commonly used in the environment involved. "Language considered acceptable in a freight yard office may be unacceptable in another setting, for instance, a girl's school theology class." (Award No. 18439, Third Division, National Railroad Adjustment Board).

In the instant dispute, there is no question from the evidence of record, replete with undenied testimony, that the language of "f--k" is commonly and frequently used on Gang 121, Fort Worth, and is used by rank and file as well as by supervisors. Common use, however, as part of the colorful lexicon of maintenance of way gang language, does not necessarily remove such language from the category of being vulgar, profane, abusive or disrespectful to one's supervisor. Words have different meanings, depending on how the words are spoken as well as the setting, including to whom the words are spoken. As stated by one employee at the investigation, "He said that Big Un says it all the time. But Big Un don't say it to the Foremen. We all go out there and cut up, but we don't do it to the Foremen." (Tr. p. 18).

The Carrier declares that "Such language may be accepted in a labor gang among the men but its use toward a supervisor is insubordinate and disruptive, and its use in the presence of other employees makes it all the more likely that proper respect for foremen would be in peril." Further, the Carrier has stated: "General disorder would be the result if such behavior prevailed on this railroad. Such is not the case on this property. Insubordinate conduct will not be condoned." (Carrier's Exhibit No. 2(b)).

The transcript of investigation clarifies the sense in which Claimant O'Neal used the language:

"Q. Mr. O'Neal, why did you tell Mr. Persons to get f----- after being instructed to perform duties?

A. Well, it was said in a jokingly manner because I had been previously working with Mr. Persons, just the two of us, the following couple of days, and about all we did is ride around and B.S. together while we are working." (Tr., p. 23).

Claimant, apparently, was using the language of the gang, failing to realize that Mr. Persons was his Supervisor and not his fellow member of the gang. This was poor judgment and is not to be condoned, but the Board cannot find justification for discharge in the circumstances presented.

A W A R D

1. The Carrier is in violation of the Agreement.
2. The Carrier shall reinstate Claimant S. W. O'Neal but without pay for time lost.

Joseph Lazar

JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

S. E. Fleming

S. E. FLEMING, EMPLOYEE MEMBER

B. J. Mason

B. J. MASON, CARRIER MEMBER

DATED: April 5, 1983