PUBLIC LAW BOARD NO. 1850

Award No. 3

Docket No. 4
Org. File No. BALT-W-202
Carrier File No. 2-MG-1553

Parties to Dispute: Brotherhood of Maintenance of Way Employees and Baltimore and Ohio Rialroad

Statement of Claim: Claim on behalf of Trackman Haskell J. Wallace, Baltimore Division, on account of his being dismissed from the service for using abusive language towards his Foreman and failing to follow his foreman's instructions during his tour of duty on March 17, 1976.

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 27, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearings held.

Claimant Trackman was dismissed from carrier's service on April 6, 1976 as a result of an investigation held March 23, 1976 concerning a charge of "...refusing instructions from your Foreman and using abusive language on March 17, 1976."

No procedural deficiencies were interposed to prevent our review of the merits of the case. Claimant had been accorded due process.

There was sufficient probative evidence adduced to support Carrier's conclusion that Claimant was guilty of using abusive language toward his Foreman but not for refusing instructions from his Foreman. The transcript reflects that Claimant came to work on March 17, 1976, not properly dressed for the weather conditions. He asked his Foreman to drive him to the bus. During the drive, when Claimant found out that he was only going to be paid two hours, he berated and insulted the Foreman. Claimant observed that the Foreman was lower than a bitch and that something bad in life would happen to him. Claimant changed his mood and wanted to go back to work. The Foreman drove back. Claimant left work about 1:00 p.m. that date.

The Board fails to find supporting evidence that Claimant failed to follow instructions of his Foreman. However, the use of abusive language and berating of a supervisor, particularly when performed in front of fellow workers, is a serious offense and when, as here is proven, it merits strong discipline for the insubordinate act.

The Board finds no reason in the record to permit a change in the discipline assessed. Perhaps that was the reason that the Employees were seeking leniency which generally is beyond the competence of this Board.

In the circumstances, we are constrained to deny the claim.

Award: Claim denied.

A. J. Cunningham, Employee Member

L. W. Burks, Carrier Member

Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Atlanta, Georgia, June 9, 1977.