

PUBLIC LAW BOARD NO. 3445

Award No. 13
Case No. 13

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

And

Southern Railway Company

STATEMENT OF CLAIM:

Claim that T and S Gang No. 14 Machine Operator R.L. Jones be paid for all time lost while suspended August 18 through November 15, 1982 for violation of Operating Rule GR-4 and conduct unbecoming an employee.

FINDINGS:

Claimant, at the time of the incident in question, was employed by Carrier as a Machine Operator on Timber and Surfacing (T and S) Gang No. 14.

By letter dated August 18, 1982, Claimant was notified to attend an investigation concerning charges that he acted with conduct unbecoming an employee on the morning of August 18, 1982. An investigation was held on August 24, 1982. By letter dated September 3, 1982, Claimant was notified that he was suspended for the period of August 18 to November 15, 1982, for his culpability regarding the above-mentioned charges.

The issue to be decided in this dispute is whether Claimant was disciplined for just cause under the Agreement.

The position of the Carrier is that Claimant acted with conduct unbecoming an employee and violated Operating Rule GR-4 by refusing to follow his foreman's instructions.

In support of its position, the Carrier cites the testimony of Supervisor H.C. Trice, who testified that Claimant entered Carrier's kitchen, and, upon being informed that it was closed, proceeded to verbally attack the cook. The Carrier further cites Trice's testimony showing that Claimant acted in an irrational manner and was verbally abusive toward him as well.

The Carrier also cites the testimony of Foreman M.C. Jackson, who indicated that when he instructed Claimant to report to his supervisor, Claimant refused and stated that he "didn't have to listen to nobody...." Finally, the Carrier refers to Trice's testimony that the cook was "shoved" by Claimant. The Carrier asserts that the above-cited testimony clearly establishes that Claimant acted with conduct unbecoming an employee. The Carrier additionally contends that Claimant violated Rule GR-4, stating in pertinent part, "all employees must follow instructions from proper authority". The Carrier alleges that Claimant violated this rule by failing to report to his supervisor when ordered to do so by the foreman.

Finally, the Carrier contends that the discipline imposed was not excessive. Carrier cites several awards holding that conduct unbecoming an employee constitutes grounds for dismissal.

The position of the Organization is that Claimant was unjustifiably suspended from service by Carrier. The Organization first

contends that Claimant, contrary to Carrier's allegation, was in the kitchen at 6:47 a.m., at which time the kitchen was required to be open. The Organization alleges that the kitchen was to remain open until 6:50 a.m., and therefore should have been open to serve Claimant.

The Organization further contends that the testimony given at the hearing showed that Trice was mainly responsible for using abusive language, directed toward Claimant. The Organization contends that Claimant was not abusive or insubordinate. Finally, the Organization maintains that Claimant did not disobey instructions. The Organization contends to the contrary that Claimant left Carrier's property as soon as instructed to do so by Division Engineer Schafer.

The Organization concludes that Carrier failed to prove Claimant's culpability, and that the discipline imposed on Claimant was harsh and unwarranted.

After review of the entire record, the Board finds that the Organization's claim must be denied.

It is not the purpose of this Board to rehear an investigation that the Carrier's held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

The Carrier has established Claimant's guilt of the offense charged through substantial, credible evidence. The evidence produced at the hearing indicates that Claimant was both verbally abusive and insubordinate. The Organization's contention concerning

the time of Claimant's arrival at the kitchen is irrelevant. Assuming that the kitchen should have been open, Claimant's actions would be no more justified or appropriate. Additionally, while we agree that conflicting testimony exists, this Board has long held that the Carrier may decide issues of credibility and weigh evidence so long as it does not abuse its discretion. In the present case, we find sufficient evidence to support Carrier's disciplinary action.

Finally, we conclude that the discipline imposed was not excessive. Behavior such as Claimant's cannot be tolerated. The Carrier has a right to expect that its employees will handle themselves in a responsible manner. Furthermore, Claimant's refusal to follow orders constitutes insubordination and is a serious offense. The Carrier cannot operate without the cooperation of its employees. In light of the above and considering Claimant's prior service record, we find the discipline imposed reasonable.

AWARD:

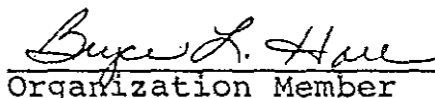
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 11/13/85