Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8079
SECOND DIVISION Docket No. 7675
2-C&NW-MA-'79

The Second Division consisted of the regular members and in addition Referee James F. Scearce when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. That Machinist Helper Bernard Adams, hereinafter referred to as the Claimant, under the current agreement was unjustly suspended on September 21, 1976 and subsequently dismissed from service effective October 11, 1976; furthermore, such discipline assessed Claimant was unwarranted, harsh and extremely excessive.

2. That accordingly the Chicago and North Western Transportation Company, hereinafter referred to as the Carrier, be ordered to compensate Claimant for all time held out of service commencing with September 21, 1976, and to restore Claimant back to service with all seniority and other employee rights unimpaired, including but not limited to health, welfare and overtime.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

The dispute in this case culminates from events on the evening shift at the Carrier's diesel repair facility (M-19A) in Chicago, Illinois. The Claimant, a machinist helper, had been assigned to "bar engines", among other duties. Apparently, the Claimant disdained to continue barring engines because he wished not to (according to the Carrier) or because he was "sick" (according to the Claimant). In either case he informed his supervisor he was going home, pulled his time card and upon presentation to his foreman (who had ordered the continued barring operation) was advised to see the General Foreman. In doing so, the Claimant was instructed to produce a medical statement upon his return to work, substantiating the "sickness". (The Claimant had asserted his problem to be "back trouble".) The Claimant refused to produce such a slip, words were exchanged between he and the General Foreman, whereupon the Claimant tore up his time slip, indicated

he was not going home after all and passed a remark to the General Foreman who took it as a threat; per the General Foreman the Claimant said, "Don't worry man, I'll see you sometime when you're alone and you will be alone sometime". According to the Claimant, he "told (the General Foreman) that (the Claimant) would talk to him later then by himself".

Based upon this event, the General Foreman told the Claimant that he was out of service for making a threat, whereupon the Claimant refused to leave the premises. Upon being advised that the security forces would be called, the Claimant again refused to leave and advised that he would be at his locker with a gun, to resist such action. The guards were called and the Claimant thereafter left the premises under their escort.

Whether the Claimant was indeed incapable of continuing to work on the date in question is at best problematic, considering the turn of events that followed. Even if such a claim were accepted, his subsequent actions defeat any reasonable consideration for his lack of culpability. A single, sudden error in judgment might be overlooked, but the Claimant compounded one error by actions which constitute insubordination, a probable threat to a supervisor and, finally, a threat to do serious harm by use of a weapon. The workplace must be governed by rational rules and regulations -- not the law of the jungle. While there is reason to doubt the existence of his illness, based upon the record presented, even if the Claimant was suffering a back injury, he should have been able to produce medical certification. If the Claimant felt he was being improperly treated, his rights existed under the Agreement for representation. Finally, in several circumstances the Claimant could have and should have followed the well-stated adage -- "obey and grieve". He took none of these alternative approaches to dealing with this matter, but instead created a morass of errors which add up to an inexcusable conduct. We find no basis to disturb the Carrier's action in this case.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of September, 1979.