

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers  
(Consolidated Rail Corporation)

STATEMENT OF CLAIM:

Appeal of discipline of dismissal imposed upon Electrician R. S. Gisczinski, Collinwood Radio Shop, Ohio, by the Consolidated Rail Corporation on January 18, 1991.

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 employes 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 were given due notice of hearing thereon.

The Claimant was employed by the Carrier as a Radio Maintainer. The Claimant did not work on December 10, 1990, one of his assigned days to work. After arriving at work on December 11, the Claimant was questioned at length by a Communications Supervisor regarding his absence on December 10. The Claimant was asked why he had not called in but did not answer the question. The Supervisor then instructed another employee to show the Claimant as being "AO" Absent Without Permission. This action apparently angered the Claimant and subsequently an altercation took place between the Claimant and the Supervisor following which the Supervisor called the Conrail Police Department. The Claimant was held from service at 8:00 A.M. on December 11 and notified to attend a trial on December 28, 1990 charged with violating Rule E, Rule 3013 and Insubordination. Under date of January 18, 1991 the Claimant was notified he was dismissed from service having been found guilty of the charges.

Rule E reads in part, as follows:

"Gambling, fighting or participating in any illegal immoral or unauthorized activity while on duty or on Company property is prohibited."

Rule 3013 reads, as follows:

"Personal conduct must be free from scuffling, practical jokes or horseplay while on duty or on company property."

The Employees main argument in this case is that the Carrier failed to meet the burden of proof to support its decision and in any event in the light of Claimant's past record the discipline assessed the Claimant was excessive.

At the trial the Supervisor testified that during the altercation the Claimant struck him and threatened his life. The Claimant, however, denies striking the Supervisor or threatening his life. There were no witnesses to the Claimant actually striking the Supervisor. The testimony of witnesses who were nearby and came upon the scene immediately after the incident indicates, however, that something happened causing the Supervisor's glasses and cap to fall to the floor. These same witnesses testified that they overheard the Claimant threaten the Supervisor's life. After carefully reviewing and analyzing all the testimony given at the trial, some of which is in direct conflict, it is our conclusion that sufficient evidence was adduced to show that the Claimant was guilty of the charges.

We find that while severe discipline was warranted in this case, permanent dismissal was excessive. In reaching this conclusion we took into consideration the fact that the Claimant had a clear discipline record for fifteen years prior to this incident and that the Supervisor was not injured and did not require medical treatment. Accordingly, the Claimant shall be restored to service with seniority and all other rights unimpaired, but without any compensation for time lost while out of service. We would expect the Claimant will have learned a lesson from this incident and that any future differences with his supervisors will be handled in a business-like manner.

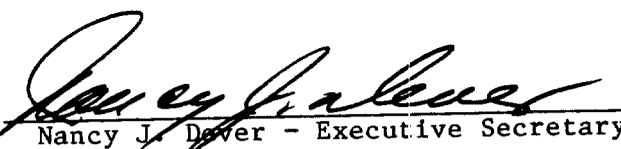
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Claim sustained in accordance with the Findings.

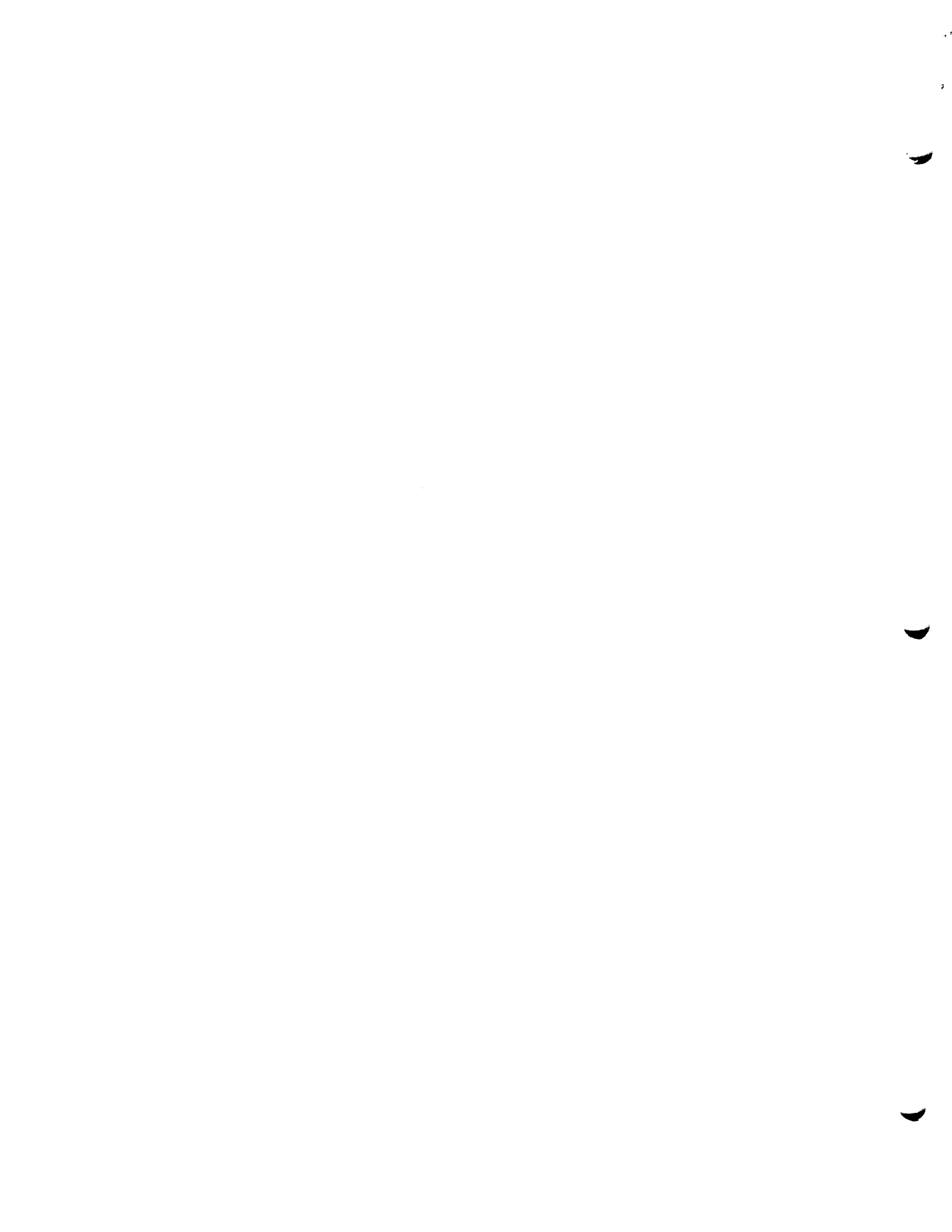
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Award No. 12355  
Docket No. 12345  
92-2-91-2-181

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of June 1992.



CARRIER MEMBERS' CONCURRING AND DISSENTING OPINION  
TO  
AWARD 12355, DOCKET 12345  
(Referee Prover)

We do concur with the Majority's Findings that:

"...it is our conclusion that sufficient evidence was adduced to show that claimant was guilty of the charge...."

We do object to reinstating Claimant to service. What led to the charge was Claimant's uncontrolled reaction to some simple questions, to wit:

Why were you absent yesterday?  
Why didn't you call in?

Claimant, upon refusing to answer these questions, was then reported as absent without authority. Claimant's reaction was to strike his supervisor after threatening "...to blow his ---- brains out...."

The Majority totally ignored the threat in its Findings and returned Claimant to the same work environment with the utterly incredulous Findings that:

"...the Supervisor was not impaired and did not require medical treatment..."

Fortunately, the majority of Awards find that vulgar and profane language coupled with threats against a supervisor are grounds for dismissal. (See recently adopted Second Division Award 12283.) Unfortunately, this Majority does not hold the same view.

As a precedent, this is not. As an anomaly, this is.

To say we dissent is an understatement.

*Robert L. Hicks*

R. L. Hicks

*M. W. Fingerhut*

M. W. Fingerhut

*Michael C. Lesnik*

M. C. Lesnik

*P. V. Varga*

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*James E. Yost*

J. E. Yost