

CORRECTED

Form 1 **NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13095
Docket No. 12982
97-2-95-2-3

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Brotherhood of Railway Carmen, Division of the
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"1. That the TRRA of St. Louis violated the controlling Agreement of August 21, 1954, as subsequently amended, when on July 23, 1993 Carman M. M. Walz was unjustly removed from service pending formal investigation held on July 28, 1993, which resulted in his unjust dismissal, effective August 6, 1993.

2. That the TRRA of St. Louis be ordered to return Carman M. M. Walz to full service with payment for all lost wages, restoration of all seniority rights unimpaired and all fringe benefits, including, but not limited to vacation, insurance and all other benefits which are a condition of employment."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Carrier wrote Claimant on July 26, 1993, as follows:

"... An investigation will be held ... at 9:00 A.M., Wednesday, July 28, 1993, to develop the facts, discover the cause and determine your responsibility, if any, in connection with your alleged violation of Terminal Railroad Association of St. Louis General Rule M, effective 12:01 A.M., April 5, 1987, when it was reported that at approximately 2:50 P.M., July 22, 1993 you were heard to threaten the lives of fellow employees; and to determine if any Operating Rules, Safety Rules or Special Instructions were violated in connection therewith...."

Following the July 28, 1993 Investigation, the Carrier dismissed Claimant from service on August 6, 1993.

The Investigation developed that prior to starting his shift on July 22, 1993, Claimant, while awaiting the decision of Carrier in an Investigation held earlier, said somewhat as follows:

"If we get fired I may get stressed out like the postal worker that got fired and shot his bosses and fellow workers."

Then, when one of his peers in the locker room said, "let me know when and I'll take the day off" whereupon Claimant responded saying, "I meant the officials, not you guys...."

Claimant's defense has been that this was just idle talk, that he never intended anyone to take it seriously. However, three of Claimant's fellow workers approached Claimant's foreman and expressed apprehension about Claimant's remarks. In fact, each written statement by each of Claimant's peers express the same sentiment.

The Carrier has an obligation to provide a safe work place, and when the supervisor became aware of Claimant's threats (and that is exactly how Claimant's remarks came across), they called in their security force to investigate. When it was determined that Claimant did utter these threats, they then relieved Claimant from service pending the results of the Investigation. The Organization attempts to mitigate the seriousness of the charges by pointing out that the Carrier did not suspend Claimant until near the end of his shift on July 23, 1993, allowing him to work almost two full days

after the remarks were made.

There were accusations that Claimant on dates preceding this incident had brought on the property a 9 mm. automatic (that he left in his car) and that he owned an AK-47 assault rifle, but these accusations were not substantiated. However, it was developed that Claimant was a gun owner, and that he was proficient in the use thereof.

This Board finds that the Carrier fulfilled its obligation of establishing substantial evidence of Claimant's culpability for the charges assessed and that the Carrier was not arbitrary, nor did it abuse its power to discipline when it dismissed Claimant from its service. The claim will be denied.

Since it is the finding of this Board that the Carrier substantiated its charges with sufficient evidence, there is no need to adjudicate Carrier's procedural arguments.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 21st day of January 1997.