

Award No. 4326
Docket No. CL-4296

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

Daniel Seidel, Trucker, South Philadelphia Freight Station, Philadelphia, Pennsylvania, be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from June 6, 1947, until adjusted. (Docket E-430.)

OPINION OF BOARD: The evidence in the record is not in conflict as to the facts of this case and the record leaves little question that Claimant was guilty as charged. Claimant himself did not deny guilt. While strong language may be customary to some phases of railroading, the use of vulgar and profane language toward other employees cannot be said to be so. Only a few months earlier, on January 10, 1947, Claimant had been disciplined, then for the use of abusive language toward his Foreman. Claimant contends that he has been picked on and made the subject of jokes by other employees; there is no evidence in the record to substantiate that charge. Claimant entered the service of the Carrier on August 24, 1945. A review of his discipline record is proper to help determine the reasonableness of disciplinary action now under consideration. It is well established by many Awards of this Board that it should not order the reinstatement of an employee unless the evidence clearly indicates that the carrier had acted arbitrarily, without just cause, or in bad faith; the Carrier has not done so here.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of February, 1949.