

Award No. 11913
Docket No. MS-14076

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

HOSEA HAYNES

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM:

1. Carrier violated the provisions, purpose and intent of the Clerks' Agreement when on May 26, 1962, it removed Hosea Haynes from the service of the Railway based on investigation held May 23, 1962.
2. Hosea Haynes be reinstated to service with all rights and seniority restored.
3. Hosea Haynes' record be cleared of all charged against him.
4. Hosea Haynes be compensated for each day held from service until returned to work.

OPINION OF BOARD: The evidence of record clearly establishes that Claimant on May 12, 1962, refused to continue to operate the tractor to which he had been assigned and told his foreman to get someone else to drive it; that thereafter he threatened the foreman with bodily harm and cursed him. Such conduct and attitude on the part of any employe would constitute sufficient grounds upon which to bring a charge of insubordination. Actions of the kind indulged in by Claimant cannot be condoned or excused unless it be shown that they were the direct result of harassment or provocation.

No such showing was here made. Accordingly, the Board may not properly set aside or mitigate the discipline imposed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1963.