

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20089  
Docket Number (X.X-20293

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (  
(**REA** Express, Inc.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood (Case No. 176) that:

1. The agreement between the parties was violated when Mr. Charles Merwin, Driver, Rochester, New York, was dismissed from his **REA** position.
2. REA Express shall reinstate Mr. Charles **Merwin** with full seniority rights and benefits.
3. **REA** Express ~~shall-commencing April~~ 10, 1972 - compensate Mr. Charles **Merwin** for all salary, overtime and other benefits lost because of the illegal discharge.

OPINION OF BOARD: Claimant, a driver, was dismissed from the service of the Company effective April 24, 1972 following an investigative hearing into charges that on April 7, 1972 he used "profane and abusive language over the telephone" to a supervisor in the presence of customers. At the hearing, Claimant admitted the use of certain basic Anglo-Saxon expletives upon being ordered by his supervisor to make an additional pickup before quitting for the day. He stated, however, that his language was not **intentionally** directed toward or descriptive of the supervisor. The supervisor and two other witnesses presented testimony that the obscenity was in fact directed at the supervisor to whom Claimant was talking on the telephone. There is no question that the offending language was heard by customers of the Company who were present during the incident.

Petitioner on behalf of Claimant relied primarily upon alleged procedural defects in the investigative hearing, viz: that the charging supervisor participated both as a witness and "**prosecutor**" at the hearing; and, that Claimant's culpability was not established "beyond a reasonable doubt." Upon careful review, we cannot agree with these contentions. The **record** discloses that Claimant was afforded a fair and impartial hearing and judged culpable by a hearing officer other than the charging supervisor. As for Petitioner's second objection, it is too well established to require documentation that insofar as evidentiary review is concerned our standard of proof is one of substantial evidence on the record. It also should be noted that Claimant's admission virtually

negatives this objection in any event.

On the entire record we find that Claimant received a fair and impartial hearing, the charge was supported by **substantial** evidence on the record, and that the **discipline** imposed was not arbitrary or unreasonable. On the latter point the Board is cognizant of Claimant's past record which included a disciplinary suspension some four months earlier for essentially the same offense. Accordingly, we shall deny the claim.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.