

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 21299
Docket Number **CL-21365**

James C. **McBrearty**, Referee

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

PARTIES TO DISPUTE: (

(The Chesapeake and Ohio Railway company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood,
GL-7973, that:

(a) The Carrier violated the Agreement when it held Mr. John F. Scott out of service and dismissed him, and

(b) That Carrier shall now restore Mr. John F. Scott to service with full seniority and all other rights unimpaired because of its wrongful actions.

OPINION OF BOARD: Claimant was hired by Carrier in September, 1957, as an Employment Date Clerk protecting vacancies at Newport News, Virginia. He established seniority under the Clerks' Agreement on December 17, 1964. On January 16, 1969, Claimant was cut-off (furloughed), and elected to protect all extra work as a cut-off **employee**.

On November 30, 1973, from approximately **10:30 A.M.** to **2:15 P.M.**, Claimant made repeated calls to Carrier's switchboard, allegedly using **vulgar**, abusive, and threatening language to the Switchboard Operator and the Chief Clerk.

Consequently, on December 5, 1973, Carrier called Claimant to check his correct address and then mailed to him by certified mail, return receipt requested, a notice in which Claimant was charged with conduct unbecoming an **employee** in violation of General Rule 801. This notice stated that a hearing **on** this charge **would** be held **on** December 12, 1973. Claimant's duly authorized representative was also **mailed** a copy of this notice.

Delivery of the notice was made to Claimant's home on December 6, 1973. No one was there to receive it, so the mailman left a slip, which **informed** Claimant that there was a certified letter for him at the Post Office. Claimant failed to pick up this letter until December 14, 1973.

The investigation was held, as scheduled, on December 12, 1973. Neither Claimant nor his representative attended. As a result of the investigation Claimant was found guilty of the charge **and** dismissed from **service** by letter dated December 13, 1973.

Numerous prior awards of this Board set forth our function in discipline cases. Our function in discipline cases is not to substitute our judgment for the Carrier's, nor to decide the **matter in** accord with

what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing **it**, there is substantial evidence to sustain a finding of guilty. If that question is decided in the affirmative, the penalty imposed for the violation is a matter which **rests** in the sound discretion of the **Carrier**. We are not warranted in disturbing Carrier's penalty unless we can say it clearly appears from the record that the **Carrier's action** with respect thereto was discriminatory, unjust, unreasonable, **capricious** or arbitrary, so as to constitute an abuse of that discretion.

In **examining** the **merits** of the case, it **is** clear from the record that Claimant from 10:30 A.M. to approximately 2:15 P.M. on November 30, 1973, hindered Carrier's telephone operator from **the proper** performance of his duties by repeated telephone **calls** in which profane and abusive statements **as well as** threats were made by Claimant to the telephone operator, the chief clerk, and a patrolman.

It is inherent in the work relationship that personnel must conform to certain well-known, commonly accepted standards of reasonable conduct while on the job. Published rules and regulations are not necessary to inform an **employee** that misconduct such as fighting or using vulgar language combined with threats may subject him to discipline or discharge. A railroad office is a place for the performance of work. While it is not a tearoom with **a Chesterfieldian vocabulary**, neither is it **a** place for barroom conduct. Childish, uncontrolled, or irresponsible outbursts accompanied by physical **or** verbal assault cannot be tolerated. Such **behavior is** not excusable because the offender **is** in an agitated emotional state. **When** an employee lacks the emotional stability and rational **judgment** to restrain himself from outbursts, he also lacks the minimum qualifications to be retained **as** a member of the work **force**. We **will accordingly** 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.

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Claim denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST: *A. W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1976.