

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21799
Docket **Number** SG-21861

John P. Mead, Referee

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the General **Committee** of the Brotherhood
of Railroad Signalmen on the Terminal Railroad
Association of St. Louis:

On behalf of Max E. Vitale, dismissed pursuant to letter dated
November 12, 1975, for reinstatement with full restitution and seniority
restored.

OPINION OF BOARD: There is no dispute regarding significant facts,
no question as to a fair hearing, and no claim that
the agreement was violated. Petitioner contends that dismissal was
excessive discipline in view of claimant's good service record of **some**
22 years, and in view of the absence of physical contact.

Claimant was dismissed for violation of rule "L" and the
fourth sentence of the Carrier's Book of Operating **Rules**, which read,
respectively, as follows:

"**Employees must** not indulge in any activity on the
premises that interfere with their duties, or which
may cause injury or damage."

"The **service** demands the faithfully intelligent and
courteous discharge of duty."

While it is **true no** physical contact was made, there is undisputed
evidence of Claimant's threats of bodily **harm** and abusive language
accompanied by actions designed to intimidate three carrier officials.
Although his actions were undoubtedly prompted by an accumulation of
frustrations with an underlying resentment of higher authority, **Claimant's**
conduct clearly goes beyond an acceptable expression of his emotions.
In fact, the Brotherhood in its **submission** to this Board acknowledges that
"claimant's offense involved here **was** a serious matter".

Lacking the threats of bodily harm and actions indicating a
willingness to implement them, the dismissal penalty might be mitigated
in view of **Claimant's** extensive service record. But Claimant's testimony
at the **investigation** indicates he lost self-control, and this Board cannot

say that the carrier should continue in its employment an irresponsible individual, who threatened the safety of his fellow **employees**, just because his threats of violence were not carried out this time, or because such an individual previously has not acted similarly.

Claimant's actions were directed against the authority under which he worked. No **personality conflicts were involved**. There is no showing that the underlying cause of his violent outburst has been removed.

There is substantial evidence that the rules in question were violated, and the serious nature of the violation outweighs Petitioner's argument that the penalty was excessive. There has been no showing that the Carrier's action was arbitrary or discriminatory.

While the **circumstances** here make a strong case for leniency, leniency as such is not within the purview of this Board, and mitigation is not justified for the reasons above indicated.

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;

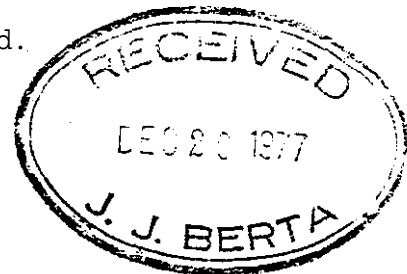
That the Carrier and the **Employees** involved in this dispute are respectively Carrier and **Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

The dismissal of Claimant was justified.

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 30th day of November 1977.