

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22026
Docket Number CL-21944

Dana E. Eischen, Referee

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

PARTIES TODISPUTE:

(
(Consolidated **Rail** Corporation
((Former Penn Central Transportation **Company**)

STATEMENT OF CLAIM: Claim of the System Committee of the **Brotherhood** GL-8291,
that:

- (a) **The** dismissal in all capacities of W. J. **Gump**
following a trial held on June 17, 1975, was
arbitrary, capricious and unjust.
- (b) Mr. W. J. **Gump** shall be restored to the service of
the Carrier with Seniority and all other rights
unimpaired and compensated for all time lost from
his position as a Block Operator of the **Penn Central**
Transportation Company, **beginning** June 10, 1975 and
continuing until he is restored to service.

OPINION OF 30ARD: **This** case involves the dismissal from service of Mr. W.
J. **Gump** following an incident on June 9, 1975. By letter
dated June 10, 1975 **Claimant** was notified to attend a trial on June 17, 1975
on the following charge:

"Violation of **second** paragraph, Rule E
of the **Penn Central** Rules for Conducting
Transportation (effective 4-7-72), **when**
you threatened Operator G. E. Felabom,
by pointing a hand gun at him at **Warsaw,**
Indiana at approximately 6:45 A.M., CST,
June 3, 1975, while you were the Operator
on duty at **Warsaw, Indiana.**"

Review of the transcript establishes beyond reasonable doubt that Claimant pulled a **gun** on a fellow employee during an **argument** over smoking in the office. The record shows that Claimant is exceptionally sensitive to tobacco smoke and has frequently confronted other employees to insist that they not smoke in his presence. It also is established by Claimant's own testimony that he had a long-standing **grudge** going back some 25 years against Mr. Felabom. When Felabom refused to put out his pipe at Claimant's demand, Claimant stated in words or **substance**, "I'll put it out for you." He then **pulled** out his pistol and pointed it at Felabom who **immediately** called the police. **Before the police arrived**, Claimant pulled the pipe out of Felabom's mouth and threw it out the window. The police arrived, disarmed Claimant, removed the bullets from the gun and returned it to Mr. **Gump**. The record shows that Claimant did have a **valid pistol permit** to have the weapon in his **possession**.

The foregoing facts are fully established on the record. **There is no meaningful evidence** to support Claimant's assertion that he was acting in self-defense and out of imminent fear **for his life**. Notwithstanding whether his objections to tobacco smoke were reasonable or the reasons for the previous "bad blood" **between** himself and Mr. **Felabom**, **there** is no justification for his conduct. No **employee** can be expected to tolerate such deadly threatening conduct at the **workplace** by one **employee** against **another**. The charge against **Claimant** is fully supported by the evidence, his misconduct warrants **discipline**, and the penalty of dismissal shall not be disturbed by us. The claim is denied.

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

That the parties waived oral bearing;

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

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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 28th day of April 1978.