

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22049**
Docket Number *NW-22140*

Robert A. **Franden**, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The dismissal of Lineman **J. L. Perkins** was unwarranted and without just and sufficient cause.

(2) Lineman **J. L. Perkins** be reinstated with seniority, vacation and all other rights unimpaired and be compensated for all wage loss suffered.

OPINION OF BOARD: Pursuant to notice and investigation properly held Claimant was dismissed from the service of the Carrier for threatening and abusing office personnel with hostile and vulgar language.

The incident complained of occurred when Claimant returned to work after having been out on account of illness. At that time he presented a return-to-duty form and requested light duty. Claimant was advised that no light **duty assignments** were available and that he must obtain a proper return-to-duty form from the Carrier's medical department. A verbal altercation arose which gave rise to the charge for which Claimant was dismissed.

A reading of the record including the transcript of the investigation reveals that the conduct of the Claimant at the time in question was violative of the **rules** of conduct of the Carrier and subjected the Claimant to proper discipline. The conduct exhibited by the Claimant in using "off color" language and acting in a threatening **manner cannot** be tolerated.

In reviewing the discipline assessed to determine if it was warranted we normally grant the Carrier considerable latitude. In the instant matter, however, absent a showing that Claimant's prior record would so **warrant**, we find that dismissal in this case is excessive.

Accordingly, we find that Claimant should be reinstated to service without payment for time lost and with seniority unimpaired. As a condition of Claimant's return to work he must obtain the proper return-to-duty form from Carrier's medical officer. Claimant is cautioned that while this Board is acting to reinstate him we in no way excuse his actions and any repetition will justify his dismissal.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 discipline was excessive.

A W A R D

Claim sustained in accordance with this Opinion.

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

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.

