

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23027  
Docket Number MS-23096

Paul C. ~~Carter~~, Referee

PARTIES TO DISPUTE: { (Robert Jacques  
(Consolidated Rail Corporation  
( (Former Lehigh Valley Railroad Company)

STATEMENT OF CLAIM: "1. Was my dismissal for 'insubordination' to  
Can Rail Assistant **Supervisor** of Track  
Production, A. Bernabei, illegal?

2. ~~Was~~ my dismissal for 'insubordination' to Assistant Supervisor  
of Track Production, A. Bernabei, excessive and or arbitrary?

3. Was my dismissal for 'insubordination' to Assistant Supervisor  
of Track Production, A. Bernabei retaliatory because I am an active Grievance  
**Committeeman** for my Lodge, Lodge 705, **BMWE**?

4. Was my dismissal for 'insubordination' to Con Rail Assistant  
**Supervisor** of Track Production, A. Bernabei, part of a **campaign** by Con Rail  
to harass and intimidate my Lodge because of its union activism?

5. Did the Con Rail hearing and investigation in my case violate  
the contract because it was an unfair **hearing**?

6. Should I be re-instated with full back, seniority, and  
all other benefits?

7. Did Con Rail violate the applicable collective bargaining  
agreement when it dismissed me for 'insubordination'?"

OPINION OF BOARD: The claim herein was submitted to the Board by the  
Claimant and the Local **Chairman** of the Brotherhood  
of Maintenance of Way **Employees**.

While the Statement of Claim in the present dispute is worded  
differently, the occurrence giving rise to the dispute was the **dismissal**  
from service of **the** same claimant for the **same** alleged offense on **the**  
same date as covered by our Award No. 23026. The record  
shows **that** the Local **Chairman, who** is an attorney, **attempted** civil  
action against the Carrier, concerning Carrier's dismissal of claimant,  
in **the Superior Court** of New Jersey, Chancery Division, Essex County.  
The court action was dismissed.

We do not consider it the intent of the Railway Labor Act, which has as one of its primary purposes, the prompt and orderly settlement of disputes growing out of grievances or out of the Interpretation or application of agreements covering rates of pay, rules, or working conditions, that the National Railroad Adjustment Board repeatedly adjudicate the same dispute involving the same **claimant** and arising out of the same **occurrence, simply** because the **claimant** may choose different representation.

As **the** claimant's dispute with the Carrier arising from his **dismissal from** service on September 21, **1978**, for his actions on August 31, 1978, has been adjudicated by our Award No. 23026, the dispute herein **will** be dismissed.

**The Carrier** also points out that questions (1) through (7), set out in the Statement of Claim were never handled or discussed on the property as required by Section 3, First (1) of the Railway Labor Act. **We do not think that the** Petitioner has **adequately answered the Carrier's** contentions in **this respect. Even** though some of the questions may have been touched upon in the **investigation**, this does not meet the requirement of Section 3, First (1) which requires handling in the usual manner up to and **including** the chief operating **officer** of the **Carrier** designated to handle **such** disputes. Only disputes **handled** in the usual **manner with the** Carrier's highest designated **officer of appeals, and failing of adjustment, may be** referred to the Board. **This** would also constitute proper basis for dismissal of the claim,

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

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That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *Adm. Paul*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.