

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23970
Docket Number MW-23779

Josef P. Sirefman, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE:

[Chesapeake and Ohio Railway Company

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

(1) The dismissal of Welder James A. Harper for **allegedly damaging** company property and conduct unbecoming an employe was excessive and wholly and disproportionate to the charge (System File **C-D-832/MG-2616**).

(2) Welder James A. Harper shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for wage loss suffered."

OPINION OF BOARD: Claimant James A. **Harper**, a welder, with two years service, was charged with conduct unbecoming a Railway employe, with **damaging** Company property on July **26, 1979**. An investigation was held on August **23, 1979**, and subsequently Claimant was dismissed **from** service.

A **review** of the record before this Board establishes that Claimant, apparently feeling frustrated **over** a grievance that was not progressing to his satisfaction, drove his car **into the car furnished** to-a **supervisor** by ~~the~~ Carrier, feigned injuries, **claimed** he was "Jesus Christ", and had to be **taken from** the property **by a policeman**. Clearly there was substantial evidence to sustain the Carrier's decision to discipline Claimant.

In weighing the penalty of termination it is **instructive** to consider the following question and answer at page **13** of the transcript:

"**Q.** Mr. Harper, do you believe you were acting in a rational manner **while you** were at Martin on July **26, 1979**?

A. Not at face value. **However**, I knew what I was doing and I took this action knowing that it would lead to a Board of Inquiry and then we could get the situation straightened out. "

There are ample procedures available to an employe claiming a grievance without resorting to such **extreme** and exceptional tactics. Claimant's bizarre behavior makes his conduct on the job wholly unpredictable and his termination reasonable.

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 apprwed June 21. 1934;

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

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago. Illinois, this 27th day of August, 1982.

