

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24060
Docket Number CL-24290

Edward M. Hogan, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, **Express** and Station **Employees**
(**The Baltimore and Ohio** Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9503) that:

(1) Carrier did violate the effective Clerk-Telegrapher Agreement when, on December 1, 1980, it unjustly dismissed Clerk operator D. L. Jefferson from **Carrier's** service, and

(2) As a result of such impropriety, Carrier shall be required to reinstate Mr. D. L. Jefferson to his **former position and** compensate him for all wages lost, **commencing** December 1, 1980, and continuing until reinstated.

OPINION OF BOARD: Clerk Operator D. L. Jefferson was dismissed from the service of the Carrier on December 1, 1980, following a formal **investigation** after which he was found guilty of using profane vulgar language, conduct unbecoming an employe and threatening the **Trainmaster**. Prior to his dismissal, Claimant was one of nine former **CRI & P** Railroad (Rock Island) clerical **employees** hired by the **B&O** in August 1980, to perform service on the former Rock Island Subdivision under Agreement made March 4, 1980, commonly referred to as the "**Miami Accord.**" The **Board** will examine three issues raised by the Claimant:

- (1) Whether a fair **and impartial** hearing occurred;
- (2) Whether there was sufficient evidence of record to find **Claimant** guilty of the charges; and
- (3) Whether the discipline should be dismissed.

First, it is the opinion of the **Board** that Claimant was given a full and fair hearing in **compliance** with Rule 47 of the Agreement. The record of the investigation clearly shows that the hearing was conducted in a fair and impartial manner with proper notice of the charges, sufficient time to prepare a defense, and the opportunity to present and cross-examine witnesses. The Claimant **was** present at the investigation and assisted **by** a representative of his choice.

Second, it is the opinion of the Board that there exists substantial evidence in the **record** to support the charges of using profane and vulgar language, conduct unbecoming an **employe**, and threatening the **Trainmaster**. Longstanding opinion of the Board clearly held that this Board will not upset the **findings** of a properly conducted investigation where there is substantial evidence to support the charges.

Third, it is the **opinion** of this **Board** that the seriousness **and gravity** of these offenses **support** the discipline as assessed by the **Carrier** and that this Board will not **interfere** with the **discipline imposed**.

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 **Employes** involved in this dispute are **respectively Carrier** and **Employes 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

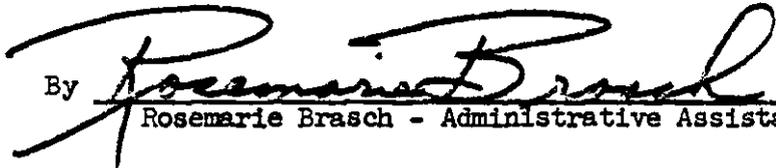
That the **Agreement was** not violated.

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 - Administrative Assistant

Dated at **Chicago, Illinois**, this 14th day of December 1982.

