

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24871
Docket Number CL-2467

Robert W. McAllister, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9631)
that:

(1) Carrier violated the effective Clerk-Telegrapher Agreement when on December 7, 1981, it imposed discipline of dismissal from Carrier's service upon Material Distributor Ronald Miller, Baltimore, Maryland, as a result of an investigation held November 20, 1981, which action was prejudicial and justified, and,

(2) As a result of such impropriety, Carrier shall be required to reinstate Mr. Ronald Miller to his former position with full rights unimpaired, his service record be cleared of the charges and discipline meted and he be compensated for all wages lost commencing November 4, 1981, and continuing, until reinstated to Carrier's service.

OPINION OF BOARD: Material Distributor Ronald Miller, the Claimant, had, at the time of his dismissal, thirteen years and eight months service with the Carrier. His dismissal results from the events of November 4, 1981, which caused him to be charged with insubordination, the use of profanity, abusive language, making a verbal threat, striking a supervisor with a thrown object, and conduct unbecoming an employe.

The Organization contends the Carrier has the burden of showing why and how the Claimant was insubordinate and what specific instructions he disobeyed. The Organization asserts the Carrier has failed to present sufficient evidence to establish the Claimant used profane and abusive language or made a verbal threat, let alone threw an object at a supervisor.

The record establishes the incident of November 4, 1981, took place shortly after 3:00 P.M. in the office of Storekeeper James McCauley. McCauley's office door was open, and three clerks sitting in the general office overheard some statements made by Claimant and McCauley and witnessed other actions. All three clerks testified the Claimant entered McCauley's office and was told to sit down. The Claimant refused. After this reply, the testimony of the supervisor and the Claimant differs sharply.

Supervisor McCauley stated that the Claimant would not sit down and responded that if the conversation was about his lunch period, he, and not McCauley, would decide when to take it. McCauley testified the Claimant was loud and shouting. Twice more, he told the Claimant to sit down. He refused, and McCauley took him out of service. As he turned to pick up a telephone, McCauley states he was struck in the face by a rubber work glove. Walking out into the general office, McCauley again encountered the Claimant who said, "... he was tired of this racist b.s." Asked to leave the property, McCauley testified that Claimant said, "... he would burn me before I had the opportunity to burn him."

The Claimant testified he did not sit down because he had just thrown up in the parking lot and had trouble with his hemorrhoids. Claimant denies threatening McCauley or being profane or abusive. He contended that McCauley jumped up from his desk and demanded that he sit down and that, if he did not, he would be taken out of service. Claimant also denied he had a pair of rubber work gloves that day and asserted he did not return to the general office area a second time.

Three clerks witnessed or overheard parts of the confrontation. Their testimony indicates the Claimant got angry and began shouting when told by McCauley to sit down. All three stated the Claimant returned to their office area after he first left. All three heard the Claimant state he was tired of all the "racist b.s.." One witness confirmed the Claimant said something along the lines of "I'll get you first;" after saying he believed McCauley was out to get him.

The above outline of testimony essentially demonstrates we are faced with an important credibility issue. Claimant denies throwing a glove at Storekeeper McCauley, denies he returned to the general office area a second time and denies threatening McCauley. According to the Claimant, he had valid reasons (hemorrhoids and sinus problems) not to sit down. Notwithstanding, the Claimant made no effort to communicate his discomfort to McCauley. As a Carrier representative, McCauley was entitled to call the Claimant into his office. When the testimony of three other Carrier witnesses is contrasted with that of Claimant's, this Board finds the conclusions reached by the Hearing Officer with respect to credibility were based on substantial evidence. If the Claimant believed he was being improperly treated by McCauley, his responses are incomprehensible. We agree with the Carrier's contention the Claimant far exceeded the boundaries of appropriate and acceptable behavior. Accordingly, the Board finds the Claimant received a fair and impartial hearing and that the action taken by the Carrier was neither arbitrary nor capricious.

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 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

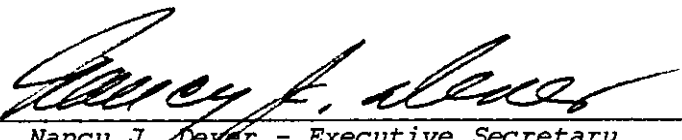
Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June, 1984