

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26039
Docket Number MW-26102

Philip Harris, Referee

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

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

(1) The dismissal of Crane Operator R. DiGrazia, Jr., for alleged 'Violation of AMTRAK's Rule of Conduct. Rules "I" and "J"' was arbitrary, without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-689D).

(2) The claimant's record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On April 20, 1983, a Burro Crane operated by the Claimant was left unattended and running for an hour and a half. He and two others from the gang were missing. That night the three were docked by their Foreman, who also informed his superior of the incident. The Claimant was cited for both the absence and for violating Safety Rules. He was reassigned to Trackman pending an investigation of his infractions. That same night the Foreman's van had two tires punctured. The night of April 28, 1983, the Foreman was locked from the outside in a trailer he was using as an office, his mother got an anonymous telephone call saying he was injured on the job, and his and other cars had their tires slashed. Also, a profane threat was written next to the Foreman's name on the timesheet, a handwriting consultant identified the inscription as that of the Claimant.

The Carrier states that when he was given an out-of-service notice the Claimant became boisterous, profane and vulgar, and threatened the Carrier Representative's life. Furthermore, he was previously suspended for another violation.

The Organization questions the validity of the handwriting analysis and objected to the fact that the person who authored the letter did not appear at the Hearing which deprived the Claimant of a fair and impartial investigation. The Organization further argues that there is no evidence that the Claimant committed the wrongdoing.

The Board finds that there were substantial grounds for the action taken, not the least of which were the actions of the Claimant that violated Rules I and J, reading as follows:

"Rule I: Employees will not be retained in the service who are insubordinate, dishonest, immoral, quarrelsome. or otherwise vicious

"Rule J: Courteous conduct is required of all employees in their dealing with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Violence, fighting, ... horseplay, threatening or interfering with other employees or while on duty is prohibited."
(Emphasis supplied)

Aside from the strong circumstantial and handwriting evidence, the Claimant's behavior concerning the above Rules militate against him. Then there is his prior record. The Carrier was not arbitrary or excessive when imposing the discipline.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1986.