

SATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26527
Docket Number MW-26538

Edwin H. Benn, Referee

(Brotherhood of **Maintenance** of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

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

1. The dismissal of Repairman T. L. Callow III for alleged violation of General Rule 'D', Paragraph 2, at approximately 12:55 A.M., on May 8, 1984 **was** excessive and in violation of the Agreement (System Docket CR-1033D).

2. Repairman T. L. Callow III shall now be allowed the benefits prescribed in Section 4 of Agreement Rule 27."

OPINION OF BOARD: Claimant had in excess of five years of service with the Carrier and was employed as a Repairman. Claimant was removed from his shift on May 9, 1984, and charged by letter dated May 10, 1984, with threatening an Equipment Engineer with bodily harm in violation of Rule D. After Hearing on June II, 1984, Claimant was dismissed from service.

According to the testimony of Assistant Equipment Engineer W. **Stryffeler**, at approximately 12:55 A.M. while at home on May 8, 1984, he received a call from Claimant wherein Claimant identified himself and then told Stryffeler that if he was brought up for any more Hearings in connection with excessive absenteeism that Claimant would "blacken my eyes, break my nose and knock out two of my teeth." Stryffeler was the Hearing Officer in three recent Hearings wherein Claimant had been charged with excessive absenteeism. Claimant testified that he recalled phoning Stryffeler on May 8, 1984, but does not recall the entire conversation because he was intoxicated at the time he made the call.

We find substantial evidence in the record that Claimant's conduct violated Rule D. Under the circumstances, the fact that Claimant asserts that he was intoxicated is no excuse for his threats of physical violence to a Carrier Official. We also find that the penalty of dismissal was neither arbitrary or capricious.

We have reviewed the Organization's procedural argument and find it to be without merit.

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

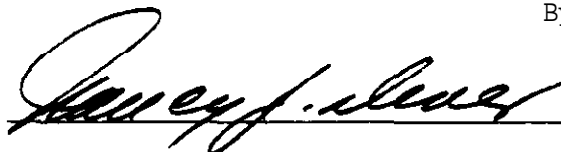
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.