

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26699

Docket Number MS-27147

Ronald L. Miller, Referee

(D. J. Bates

PARTIES TO DISPUTE: (

(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM:

"That whereas on March 1, 1985 Petitioner was arbitrarily dismissed from the service of the Baltimore and Ohio Railroad Company in prejudicial and discriminatory manner without just and reasonable cause, therefore I, D. J. Bates, employee number 1630244, continue to seek relief from that adverse action by said carrier in accordance with the following wage and benefit claim which includes requests for:

(a) Restoration to service with full seniority unimpaired, and removal from my personnel record any entry which reflects the carriers adverse decision against me.

(b) Monetary compensation at the prevailing rate(s) of pay, including all wage increases that occur during my absence from service, for wages lost from March 2, 1985 and each subsequent day thereafter on which I would be entitled to compensation, on a continuing basis, until I am properly restored to gainful employment in the service of the carrier.

(c) Timely payments of railroad retirement tax, including employer contributions, to the U.S. Railroad Retirement Board for and on my behalf until I am properly restored to gainful employment in the service of the carrier, so as to maintain continuity of service and retirement tax credits to which I would otherwise be entitled except for the carriers adverse decision against me in this instant dispute.

(d) Monetary compensation in lieu of all employee benefits to which I am entitled under the prevailing Clerks' Agreement, including those denied me at the time of my removal from service on March 1, 1985 and those which accrue during the period of my absence from service by reason of the carriers adverse decision against me in this instant dispute."

OPINION OF BOARD: A careful reading of the record provides no evidence to support the Claimant's contentions that he was denied a fair and impartial Hearing, or that the Hearing Officer was biased against the Claimant.

There is substantial evidence that the Claimant initiated a confrontation with a co-worker, persisted to continue the confrontation, and was verbally abusive without justification or provocation.

Dismissal in this matter is not excessive or unreasonable, given the Claimant's prior record. It is especially important that this incident occurred slightly over two months after the Claimant was restored to service (without backpay) in a disciplinary matter involving insubordination.

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

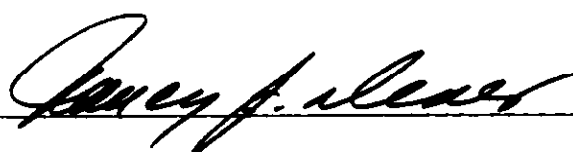
That the Agreement was not violated.

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 23rd day of November 1987.