

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27491
Docket No. MS-27048
88-3-86-3-103

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

(D. L. Gottsabend
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"In accordance with Section 3 First (j) of the Railway Labor Act, and in reference to CR-1325 I would like to make a further statement on my behalf.

The S101 stated that I was observed by C. G. McMahon throwing engine parts. In addition to the grievance in which I gave a statement on what actually did occur, I would like to clarify that I do not habitually let engine parts fall to the floor during disassembly. On 9-12-84, the day of said infraction, an injury requiring a make shift splint to my finger occurred prior to the incident in question. While attempting to do my job with the injury the housing popped off and fell to the floor. A visit to the company Doctor the same day determined I should be on light duty for two weeks due to the injury to my finger.

In reference to the attached employee statements; (Summers and Pfifner) when disassembling an engine, parts are removed in a number of ways with varying degrees of difficulty. Some parts are removed with minimal exertion, others require the use of rubber malletts, steel hammers, slide hammers, sledge hammers, acetyline torches and various pullers. In my thirteen (13) years of railway service, all of these methods of removal of parts have been and still to this day are being used at Canton Maintenance of Ways Shop.

In reference to the letter from G. F. Bent, Senior Director-Labor Relations, I have underlined and highlighted the only truth in Mr. McMahon's observation of the incident. The remainder of the questionable statement of observation is a gross misinterpretation of his imagination and a slander to my service reputation.

In defense of the statement where Mr. MaMahon reportedly observed me kicking and throwing an engine thermostat housing and outlet cap, I have attached employee statements (Bowles and Taczak) for your review.

In conclusion, as a dues paying member of the Brotherhood of Maintenance of Way Employes, and to avoid future harassment and probable discipline, I respectfully demand that the now complete matter be reviewed by the National Railroad Adjustment Board.

Please advise of outcome."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Claimant is a Maintenance of Way Repairman at the Canton Shops. On September 12, 1984, an Assistant Superintendent completed a Form S-101, Safety Training Observation Program, which read as follows:

"Mr. Gottesbend was observed throwing engine parts on floor for no apparent reason."

The Claimant took issue with this statement and initiated a Claim. In his presentation to the Board, the Claimant requests that the Board "review" the matter. No specific allegation is made as to any rule violation by the Carrier. Since there is no evidence that this is a matter involving "interpretation or application of agreements concerning rates of pay, rules or working conditions", as specified in Section 3, First (i) of the Railway Labor Act, the Board finds it has no jurisdiction to undertake the "review" requested by the Claimant.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.