

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(former Seaboard Coastline Railroad)

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

(1) The termination of Trackman M. Kersey for his alleged uncivil and boisterous conduct and insubordination was arbitrary, capricious, unjust and in violation of the Agreement (System File MK-90-21/1290248 SSY).

(2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated with benefits and all other rights unimpaired, his record cleared of the charges and he shall be compensated for all wage loss suffered."

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.

In December 1989, and January 1990, Claimant was involved in a series of incidents and absences which Carrier's Roadmaster was discussing with him in the Roadmaster's office on January 10, 1990. In the course of this discussion, Claimant became belligerent. On January 16, 1990, the following charge was placed against him.

"You are hereby charged with being absent from your position as Trackman on Gang 5F27 at Hamlet, NC, from January 3, 1990, through January 7, 1990, without proper authority. You are also charged with being insubordinate to Roadmaster Crook and conducting yourself in an uncivil and boisterous manner in his office on the morning of January 10, 1990.

Further, you are also being charged hereby with being insubordinate on January 10, 1990, in that you returned to work without furnishing Mr. Crook certain documents which you were instructed to furnish him prior to reporting to your job."

Following the Investigation on these charges Claimant was dismissed from service. The Organization has appealed the dismissal on a variety of procedural grounds as well as on its merits. We do not find Claimant's procedural due process rights, as established by the Agreement, to have been breached so as to flaw the discipline assessed. With regard to the merits of the matter, the Investigation Transcript contains adequate evidence to establish that Claimant was guilty of the charges placed against him. In fact, at the Hearing when being asked if he would refrain from belligerent conduct in the future when dealing with the Roadmaster he was unwilling to make assurances that he would do so. The opposite is clearly the sense of his answers. Accordingly, the record establishes that cause was present to administer discipline.


With regard to the level of discipline assessed, dismissal, it is noted that among the entries in Claimant's disciplinary record is a letter releasing him from service on another division as a result of failure to comply with instructions and being argumentative with supervisors. This and two other letters of reprimand leave us without a basis to modify the dismissal. It will not be disturbed.

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 28th day of February 1992.