

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29575  
Docket No. MW-30078  
93-3-91-3-494

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

(Brotherhood of Maintenance  
(of Way Employees  
PARTIES TO DISPUTE: (  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Welder J. R. Zartuche for alleged '\*\*\* conduct not acceptable as an employee of this Carrier.' was without just and sufficient cause and on the basis of an unproven and disproven charge (System File SAC-13-90/UM-16-90).

(2) Welder J. R. Zartuche shall be reinstated with seniority unimpaired, compensated for all wage loss incurred and have his record cleared of this incident.

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 employe 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 details of this claim are explicitly and graphically set forth in the case file and were extensively argued before this Board. They need not be repeated in this Award.

Suffice it to say that this Claimant has been shown to have acted in a completely unacceptable manner while on duty and under pay by the Carrier.

The lady in question, who is not a railroad employee, showed considerable candor and bravery in reporting the incident in question, in subjecting herself to interrogation by Carrier's investigatory officer, and by appearing and testifying at the Carrier Investigation. Her testimony was convincing and substantial.


The Organization's action of completely failing to cross examine this non-railroad witness when they had the opportunity to do so and then to argue before this Board that the testimony was unsubstantiated is specious and totally unconvincing.

The record in this case completely supports the action of dismissal. The claim for reinstatement is denied.

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 9th day of March 1993.