

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29817  
Docket No. SG-30571  
93-3-92-3-335

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

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Chicago North Western Transportation Co.:

- A. Carrier violated the current Agreement between the Brotherhood of Railroad Signalmen and the Chicago North Western Transportation Co., especially Rule 51, when following investigation held January 17, 1991, Mr. William Tesch was dismissed without carrier proving their charges.
- B. Carrier should now be required to restore Mr. Tesch to service with full seniority rights, back pay and all other benefits he held as Ldr. Signalman. Carrier File No. 79-91-6  
GC File No. S-AV-37. BRS File No. 8575."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon

Claimant was dismissed from Carrier's service effective January 24 1991, following an investigation at which he was charged as follows:

". . . your responsibility in connection with your insubordination to your foreman when you refused to perform your duties and left the job site; and, for threatening your fellow-workers with physical harm, while working with the Waukegan Signal Crew at North Chicago on January 12, 1991."

A review of the investigation record shows that Claimant was assigned to do pole line work, but failed to comply with his foreman's instruction to climb a pole. Claimant then left the work site without obtaining the foreman's permission.

Although the foreman had not sanctioned Claimant's departure, he allowed him to ride back to the headquarters with another employee. While riding back, Claimant started talking about killing someone, making it "slow and torturous." According to the other employee, Claimant said that a few people had called him a baby killer, but did not explain why. He simply said, "Figure it out for yourself." The other employee took Claimant's comments as a threat.

During the handling of this dispute on the property, the Organization asserted Carrier had failed to deny the initial claim. Carrier insists it mailed a timely response. We find Third Division Award 24347, involving these parties, fully dispositive of this issue, and do not find a violation of the time limit rule.

Turning to the merits, we do not find a basis for setting aside Carrier's determination that Claimant's conduct was both insubordinate and threatening. These terms, however, cover a broad spectrum of conduct. Claimant's actions and statements fall within the more benign side of this spectrum. Despite Claimant's refusal to climb the pole, his foreman did not press the issue, nor did he give Claimant an order to remain at the job site. He merely told Claimant he did not have authority to release him. Although Claimant's statements were of a threatening nature it is not evident they were directed at anyone in particular.

While Claimant's conduct was serious enough to warrant discipline in excess of a brief suspension, it was not so serious as to warrant his permanent dismissal. Accordingly, we will direct that Claimant be reinstated to service with seniority rights unimpaired, but without compensation for time lost.

Claimant is cautioned that his reinstatement should not be taken as absolution. It is apparent from the record that he has been having difficulty in his relations with his fellow employees and immediate supervisors. He would be well advised to resolve these problems, perhaps through counseling, if he expects to enjoy continued employment. Future infractions of Carrier's rules such as these will most certainly result in his permanent dismissal.

#### A W A R D

Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.