

Award No. 10564

Docket No. CL-12705

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerome A. Levinson, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5015) that:

(1) The Agreement governing hours of service and working conditions between the parties was violated by the Carrier in the treatment accorded Freight Handler Alfred Rogers when it dismissed him from service on October 4, 1960 and failed to accord him a fair and impartial hearing on appeal.

(2) Mr. Rogers be returned to his former position as freight handler with seniority and vacation rights unimpaired and be paid for all time lost as a result of this unjust action.

OPINION OF BOARD: Claimant was a freight handler, hours of assignment 8:30 A. M. to 5:30 P. M., lunch period 12:30 P. M. to 1:30 P. M. On Sunday, September 25, 1960, during his lunch hour he went to the office of the Bill and Yard Clerks to pick up his check. His General Foreman told him he was supposed to pick up his check as he checked out that evening, also asked him why he did not stand-by when told to the previous evening. Claimant argued with the General Foreman, refused to leave when ordered and when the General Foreman commenced to call the Special Agent, Claimant said that if he did both of them (the latter and the Special Agent) "wouldn't be around."

The following notice was sent to Claimant signed by the Station Manager:

"Please report to my office, 500 North Front Street, East St. Louis, Illinois Thursday, September 29, 1960, 10:00 A. M. (Central Standard Time) for an investigation in connection with being subordinate and threatening General Foreman R. C. Dieffenbach, Sunday, September 25, 1960, 12:40 P. M. CST and repeating threat at 1:40 P. M. CST.

"If you wish to have a representative of your organization present, you may do so."

The investigation was conducted by the Station Manager, and on October 4, 1960, Claimant was dismissed from the service of the Carrier. Dismissal was upheld, after request for hearing on appeal.

It appears, from the record before the Board that the charges against Claimant were precise; that substantial evidence given at the investigation by several witnesses sustained the charges of insubordination and threatening the General Foreman; that Claimant was accorded a fair and impartial hearing on appeal; that Claimant had been suspended three times previously also for insubordination (including 10-day suspension January 16, 1962, the subject of Award No. 10563 announced contemporaneously with the Award herein); and that the Carrier has neither been arbitrary or capricious nor abused its discretion. Therefore, the claim must be denied.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1962.