

Award No. 16347

Docket No. CL-17306

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Arthur W. Devine, Referee

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**PARTIES TO DISPUTE:**

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

**NORFOLK AND WESTERN RAILWAY COMPANY  
(Formerly Wabash Railroad Company)**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6362) that:

(1) Carrier violated the current Freight Handlers Agreement when it arbitrarily and improperly dismissed Freight Handler B. J. Kelm on December 19, 1966, without just cause and denied him a fair and impartial hearing as provided for under the Agreement.

(2) Freight Handler B. J. Kelm be restored to service with seniority and all other rights unimpaired.

(3) B. J. Kelm shall now be reimbursed for all wage loss sustained as a consequence of Carrier's action.

**OPINION OF BOARD:** The Claimant herein was dismissed from Carrier's service following investigation on charges of insubordination in refusing to perform his assigned duties and the use of abusive and vile language to his supervisor.

The primary contention of the Petitioner is that Claimant's procedural rights were violated because the decision following the investigation was rendered by other than the official who conducted the investigation, and that Claimant was denied an avenue of appeal guaranteed him by the Agreement.

We find no valid basis for such contention. There is nothing in the Agreement that prescribes who shall prefer charges, conduct hearings, or that the officer conducting the hearing must render the decision or assess the discipline. Awards 15714, 14021, 13383, 10015, 12001, 12138, among others.

The fact that the Superintendent rendered the decision did not preclude his acting as the appeals officer (Award 15714). Further, the record indicates that this is the established practice for handling discipline cases on this Carrier.

As to the merits of the case, the record is conclusive that Claimant was guilty of conduct that simply cannot be condoned. We have no alternative but to deny the claim.

**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 Agreement was not violated.

#### **AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of **THIRD DIVISION**

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.