

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19228
Docket Number TE-19466

Arthur W. Devine, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly Transportation-Communication Division, BRAC)

PARTIES TO DISPUTE:

(
(Norfolk and Western Railway Company
((Lake Region)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Norfolk and Western Railroad (Lake Region), T-C 5858, that:

1. Carrier violated the Agreement between the parties when, effective December 22, 1970, it arbitrarily, capriciously, and with abuse of discretion, dismissed Telegrapher R. E. Kubeja from service.
2. Carrier shall, as a result, be required to reinstate R. E. Kubeja to service with vacation, seniority and all other rights unimpaired, clear his record of the charge, compensate him eight hours' pay for each day withheld from service and reimburse all expenses incurred commencing December 15, 1970, and
3. Carrier shall pay ten (10) percent per annum on all sums due and withheld as a result of aforesaid violation.

CARRIER DOCKET: TC-CON-71-1

OPINION OF BOARD: This is a discipline case. On November 17, 1970, Carrier's Trainmaster notified the Claimant:

"You are hereby charged with threatening Car Distributor Wayne A. Salsbury with bodily harm while using abusive language during telephone conversation October 23, 1970 at approximately 3:25 p.m.

Formal hearing in the above matter will be held in the office of the Trainmaster, Conneaut, Ohio, 11:00 a.m., Monday, November 23, 1970, at which time please arrange to be present.

You may bring witnesses and/or representative if you so desire".

The hearing was held on December 15, 1970, after having been postponed at the request of the General Chairman. On December 22, 1970, Claimant was notified of his dismissal from the service.

The Board has carefully reviewed the entire record, including the transcript of the hearing conducted on December 15, 1970. We find that none of Claimant's substantive procedural rights under Rule 31 was violated. There was conflicting evidence as to what actually transpired in the telephone conversation. However, it is well settled in discipline cases that this Board will not attempt to resolve conflicts in testimony. The record shows that Claimant was returned to service in May, 1971.

Based upon the entire record in the case, and the circumstances under which the offense occurred, the Board finds that the discipline imposed by the Carrier was excessive. Ninety days suspension should have been the maximum discipline administered. We will sustain the claim to the extent of allowing pay for time lost while out of service in excess of ninety calendar days from date of dismissal, computed under the provisions of Rule 31(d).

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent shown in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May 1972.