

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20314  
Docket Number CL-20452

Irwin M. Lieberman, Referee

(Brotherhood of Railway, Airline and Steam-  
( ship Clerks, Freight Handlers, Express and  
( Station Employees  
( (formerly Transportation-Communication  
( Division, BRAC)  
PARTIES TO DISPUTE: (  
( The Indianapolis Union Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brother-  
hood (GL-7465) that:

(a) The Carrier violated the Rules Agreement, effective August 16, 1948 and revised April 1, 1954, particularly Rule 18, when it assessed discipline of dismissal on D. L. Bear, Telephone Operator (Telegrapher), Churchman Avenue, Indianapolis Union Railway Company.

(b) Claimant D. L. Bear's record be cleared of the charges brought against him on or about March 22, 1973.

(c) Claimant D. L. Bear be restored to service with seniority and all other rights unimpaired, and be compensated for wage loss sustained during the period out of service, plus interest at 6% per annum compounded daily.

OPINION OF BOARD: Claimant, a Telephone Operator with eight years of service with Carrier, engaged in a heated discussion with a conductor on March 22, 1973 during his tour of duty. The conductor allegedly called Claimant an obscene name and started to walk away to comply with the instructions obtained from Claimant. Claimant grabbed the conductor by the arm, turned him around and struck him in the face with his fist. Following an investigation Claimant was found guilty of fighting while on duty and dismissed from service.

✓ Petitioner first contends that Claimant was not afforded a fair and impartial hearing as provided by the Rules. This contention is neither specific nor supported by the record of the investigation. Petitioner states that Claimant was provoked by the vile name used by the Conductor to assault him; that further he had been harrassed over a period of time by the crews and hence this was a case of "aggravated assault". For these reasons, the Organization claims that the decision to dismiss Claimant was unreasonable, arbitrary, capricious and amounted to an abuse of discretion.

The record of the investigation establishes that Claimant engaged, as the aggressor, in a physical assault on the conductor. Even if the verbal provocation is assumed, it was not sufficient to justify the attack under any circumstances. Carrier's findings of guilt were amply supported by the testimony at the investigation. Based on the employee's past record as well as the infraction per se, we find that the penalty of dismissal was clearly justified.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Parks*  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1974.