

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21120  
Docket Number CL-21224

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7943) that:

(1) Carrier violated the provisions of Rule 27 of the Master Agreement effective April 1, 1973, when on October 31, 1974, it arbitrarily and capriciously dismissed Clerk H. L. Bowman, Detroit, Michigan, from the service of the Carrier based on unproven and questionable charges.

(2) Carrier shall now return Claimant to service of the Carrier with all rights and privileges unimpaired.

(3) Claimant will now be paid for all time lost.

(4) Carrier will be required to pay interest on all time lost at the rate of 1% compounded monthly.

OPINION OF BOARD: This is a discipline dispute in which Claimant was discharged.

Petitioner first alleges that Claimant was not afforded a fair and impartial hearing because the hearing officer limited the testimony of certain witnesses to the time of the critical incident, while permitting other witnesses to stray from that time period. While the hearing officer correctly refused to permit testimony relating to events after the incident under investigation, it is apparent that he did bar questions and testimony which might have provided background relevant to the disputed incident. A careful study of the transcript, however, indicates that although the hearing officer was incorrect in his restrictions of evidence covering the period prior to the event, this error did not significantly affect Claimant's rights to a fair trial; the testimony barred was at best designed to show a pattern of prior "run-ins" and to defend Claimant's character. Neither of the areas could have directly had a bearing on the conduct on the morning in question (see Award 20227).

The transcript of the investigation reveals that the Supervisor in the dispute did swear while giving instructions to Claimant. The relatively mild expletive, though improper, was far from a provocation even remotely

sufficient to justify Claimant's subsequent conduct. Since we cannot pass on credibility issues and there was a clear-cut admission by Claimant of at least part of the allegedly improper language and conduct, it is evident that the testimony adduced at the investigation supported Carrier's conclusion of Claimant's guilt. Insubordination and threats are serious in this industry and certainly justify discipline. In this case we have no basis upon which to question the measure of discipline imposed.

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 Employee involved in this dispute are respectively Carrier and Employee 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. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1976.