

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21799  
Docket Number SG-21861

John P. Mead, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen  
(  
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood  
of Railroad Signalmen on the Terminal Railroad  
Association of St. Louis:

On behalf of Max E. Vitale, dismissed pursuant to letter dated  
November 12, 1975, for reinstatement with full restitution and seniority  
restored.

OPINION OF BOARD: There is no dispute regarding significant facts,  
no question as to a fair hearing, and no claim that  
the agreement was violated. Petitioner contends that dismissal was  
excessive discipline in view of claimant's good service record of some  
22 years, and in view of the absence of physical contact.

Claimant was dismissed for violation of rule "L" and the  
fourth sentence of the Carrier's Book of Operating Rules, which read,  
respectively, as follows:

"Employees must not indulge in any activity on the  
premises that interfere with their duties, or which  
may cause injury or damage."

"The service demands the faithfully intelligent and  
courteous discharge of duty."

While it is true no physical contact was made, there is undisputed  
evidence of Claimant's threats of bodily harm and abusive language  
accompanied by actions designed to intimidate three carrier officials.  
Although his actions were undoubtedly prompted by an accumulation of  
frustrations with an underlying resentment of higher authority, Claimant's  
conduct clearly goes beyond an acceptable expression of his emotions.  
In fact, the Brotherhood in its submission to this Board acknowledges that  
"claimant's offense involved here was a serious matter".

Lacking the threats of bodily harm and actions indicating a  
willingness to implement them, the dismissal penalty might be mitigated  
in view of Claimant's extensive service record. But Claimant's testimony  
at the investigation indicates he lost self-control, and this Board cannot

say that the carrier should continue in its employment an irresponsible individual, who threatened the safety of his fellow employes, just because his threats of violence were not carried out this time, or because such an individual previously has not acted similarly.

Claimant's actions were directed against the authority under which he worked. No personality conflicts were involved. There is no showing that the underlying cause of his violent outburst has been removed.

There is substantial evidence that the rules in question were violated, and the serious nature of the violation outweighs Petitioner's argument that the penalty was excessive. There has been no showing that the Carrier's action was arbitrary or discriminatory.

While the circumstances here make a strong case for leniency, leniency as such is not within the purview of this Board, and mitigation is not justified for the reasons above indicated.

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 Employes involved in this dispute are respectively Carrier and Employes 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

The dismissal of Claimant was justified.

A W A R D

Claim denied.



NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1977.