

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21836
Docket Number MS-22018

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE:

(Randy Dean Ayers
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Petitioner Randall Dean Ayers contends that Penn Central Railroad and their duly appointed agents and employees terminated petitioner without due cause, continually harassed, and failed to allow petitioner his right to a hearing in derogation of the Collective Bargaining Agreement in effect between the employer Railroad and the Maintenance of Way Employees to which petitioner was a Union member, and refused to enforce all other terms of the Collective Bargaining Agreement, and failed to comply with fundamental due process requirements under USCA 45 § 151 et seq.

OPINION OF BOARD: The facts underlying the present dispute indicate that Claimant was involved in a verbal disagreement with his supervisor on April 5, 1976 and he thereafter left his duty station without permission. On the following day, April 6, 1976, he returned to work but was advised he was being held out of service subject to trial in connection with the incident that occurred the day before. Upon receipt of this information, Claimant advised his supervisor that he quit, turned in his equipment and left the property. A notice to attend trial had been issued on April 6, 1976, scheduled for April 21, 1976. However, it was not held in view of Claimant's decision to quit.

When the Claimant exercised the option to terminate his employment relationship with the Carrier, on April 6, 1976, by voluntarily quitting, he was no longer covered by the contractual agreement, and any rights or privileges he had thereunder ceased to exist. That being so, Carrier was not obligated to give him a disciplinary hearing, and, conversely, Claimant's service record would not show any discipline administered.

The election to quit, rather than subject oneself to a disciplinary hearing with the risk of incurring a tainted employment record, is a free and voluntary choice made often in the industrial world, and we must respect each employee's right to make this choice in our society. For the foregoing reason, the claim must be denied.

Even if we were to accept the Petitioner's argument that Claimant did not, under all circumstances, adequately convey his real intent, and for that reason his conduct was still governed by the contract, we would have to conclude that the claim was not timely or properly handled pursuant to the applicable agreement as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of this Board, and the claim would be denied for this reason.

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.

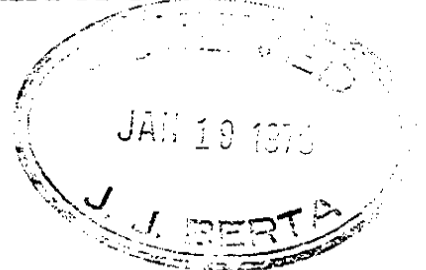
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary



Dated at Chicago, Illinois, this 6th day of January 1978.