

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22049
Docket Number MW-22140

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
that:

(1) The dismissal of Lineman J. L. Perkins was unwarranted
and without just and sufficient cause.

(2) Lineman J. L. Perkins be reinstated with seniority,
vacation and all other rights unimpaired and be compensated for all
wage loss suffered.

OPINION OF BOARD: Pursuant to notice and investigation properly
held Claimant was dismissed from the service of
the Carrier for threatening and abusing office personnel with hostile
and vulgar language.

The incident complained of occurred when Claimant returned
to work after having been out on account of illness. At that time
he presented a return-to-duty form and requested light duty. Claimant
was advised that no light duty assignments were available and that he
must obtain a proper return-to-duty form from the Carrier's medical
department. A verbal altercation arose which gave rise to the charge
for which Claimant was dismissed.

A reading of the record including the transcript of the
investigation reveals that the conduct of the Claimant at the time
in question was violative of the rules of conduct of the Carrier and
subjected the Claimant to proper discipline. The conduct exhibited
by the Claimant in using "off color" language and acting in a
threatening manner cannot be tolerated.

In reviewing the discipline assessed to determine if it
was warranted we normally grant the Carrier considerable latitude.
In the instant matter, however, absent a showing that Claimant's
prior record would so warrant, we find that dismissal in this case
is excessive.

Accordingly, we find that Claimant should be reinstated to service without payment for time lost and with seniority unimpaired. As a condition of Claimant's return to work he must obtain the proper return-to-duty form from Carrier's medical officer. Claimant is cautioned that while this Board is acting to reinstate him we in no way excuse his actions and any repetition will justify his dismissal.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 was excessive.

A W A R D

Claim sustained in accordance with this Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1978.

