

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22063
Docket Number MS-22162

Louis Yagoda, Referee

(Joseph Brown
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation

STATEMENT OF CLAIM: PLEASE TAKE NOTICE that pursuant to Section 301.5 (g) of the Rules of Procedure of the National Railroad Adjustment Board, the above-named Petitioner by his attorney, John J. Gochman, Esq., hereby serves on Division 3 of the National Railroad Adjustment Board notice that in 30 days from service of this Notice the said Petitioner will serve on Division 3 of the Board an Ex Parte Petition for relief.

PLEASE TAKE FURTHER NOTICE, that the question involved in this petition is whether the Petitioner was wrongfully disqualified from working for the Respondent in its Tickets Division. The Petitioner alleges that he was arbitrarily and capriciously disqualified from the Respondent's Tickets Division and was not afforded basic procedural due process requirements.

OPINION OF BOARD: This is a discipline case involving a series of charges filed against Claimant which related to improper job performance. Following the investigation, Claimant was given a ten (10) day record suspension and disqualified as a "Ticketeer Ticket Agent." The claim to this Board appeals this disqualification, as well as Claimant's previous disqualification from "Tower service" which occurred in 1973.

At the outset, we note Claimant's disqualification from Tower service was appealed to Special Board of Adjustment 421 and decided in Award 104 of that Board. That decision is final and binding under Section 3, Second of the Railway Labor Act and we have no jurisdiction to review such findings. In any event, those arguments were not handled in the usual manner on the property as required by our Circular No. 1 and Section 3 First (i) of the Railway Labor Act, and cannot be considered.

In reference to the disqualification of September 20, 1976, our review of the record convinces us that Carrier's decision to disqualify Claimant for failure to properly perform his duties as a

Ticket Agent was justified, and was proven to be neither arbitrary or capricious. The record as a whole establishes that Claimant treated his duties as a Ticket Agent in a cavalier manner and there is no basis for this Board to substitute its judgment for the Carrier considering all the circumstances.

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. Pauls
Executive Secretary

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

