

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22660
Docket Number MS-22804

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Larry Neal
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Termination, charge of insubordination, refusing to return to a machine."

OPINION OF BOARD: Claimant was formerly employed by the Carrier as a trackman, and was assigned to Rail Gang No. 311. He was notified to attend a hearing on August 14, 1978, on the following charge:

"Insubordination: refusing to return to his machine when ordered by Supervisor; employee was operating a tie borer and was removed from service at 4:45 P.M.: Mile Post #722, July 18, 1978."

Following the hearing, claimant was notified by letter dated September 13, 1978, of his dismissal from service.

The record is clear that the claim the Petitioner is asserting before the Board has not been handled in the usual manner on the property up to and including the Chief Operating Officer of the Carrier designated to handle disputes as required by Section 3, First (i) of the Railway Labor Act, Circular No. 1 of the National Railroad Adjustment Board, and the rules of the applicable collective bargaining agreement. The claim is, therefore, not properly before the Board and must be dismissed.

If the claim were properly before the Board, it would be denied as the transcript of the hearing, which has been made a part of the record, contains substantial evidence in support of the charge for which claimant was dismissed.

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;

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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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1979.