

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23027
Docket Number MS-23096

Paul C. Carter, Referee

PARTIES TO DISPUTE:

{ Robert Jacques
{ Consolidated Rail Corporation
(Former Lehigh Valley Railroad Company)

STATEMENT OF CLAIM: "1. Was my dismissal for 'insubordination' to
Con Rail Assistant Supervisor of Track
Production, A. Bernabei, illegal?

2. Was my dismissal for 'insubordination' to Assistant Supervisor
of Track Production, A. Bernabei, excessive and or arbitrary?

3. Was my dismissal for 'insubordination' to Assistant Supervisor
of Track Production, A. Bernabei retaliatory because I am an active Grievance
Committeeman for my Lodge, Lodge 705, BMW?

4. Was my dismissal for 'insubordination' to Con Rail Assistant
Supervisor of Track Production, A. Bernabei, part of a campaign by Con Rail
to harass and intimidate my Lodge because of its union activism?

5. Did the Con Rail hearing and investigation in my case violate
the contract because it was an unfair hearing?

6. Should I be re-instated with full back, seniority, and
all other benefits?

7. Did Con Rail violate the applicable collective bargaining
agreement when it dismissed me for 'insubordination'?"

OPINION OF BOARD:

The claim herein was submitted to the Board by the
Claimant and the Local Chairman of the Brotherhood
of Maintenance of Way Employees.

While the Statement of Claim in the present dispute is worded
differently, the occurrence giving rise to the dispute was the dismissal
from service of the same claimant for the same alleged offense on the
same date as covered by our Award No. 23026. The record
shows that the Local Chairman, who is an attorney, attempted civil
action against the Carrier, concerning Carrier's dismissal of claimant,
in the Superior Court of New Jersey, Chancery Division, Essex County.
The court action was dismissed.

We do not consider it the intent of the Railway Labor Act, which has as one of its primary purposes, the prompt and orderly settlement of disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions, that the National Railroad Adjustment Board repeatedly adjudicate the same dispute involving the same claimant and arising out of the same occurrence, simply because the claimant may choose different representation.

As the claimant's dispute with the Carrier arising from his dismissal from service on September 21, 1978, for his actions on August 31, 1978, has been adjudicated by our Award No. 23026, the dispute herein will be dismissed.

The Carrier also points out that questions (1) through (7), set out in the Statement of Claim were never handled or discussed on the property as required by Section 3, First (1) of the Railway Labor Act. We do not think that the Petitioner has adequately answered the Carrier's contentions in this respect. Even though some of the questions may have been touched upon in the investigation, this does not meet the requirement of Section 3, First (1) which requires handling in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes. Only disputes handled in the usual manner with the Carrier's highest designated officer of appeals, and failing of adjustment, may be referred to the Board. This would also constitute proper basis for dismissal of the claim.

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

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That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Phillips*
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.