

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23290
Docket Number MS-23442

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Jerry L. Anglin
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Was Mr. Jerry L. Anglin's termination of employment with Consolidated Rail Corporation warranted, and was such punishment as termination excessive for the act involved, and was such an action supported by the evidence presented?"

OPINION OF BOARD: It is clear from the record that the claim before the Board has not been handled in the usual manner in appeal to Carrier's highest designated officer of appeals as required by Section 3, First (i) of the Railway Labor Act, which is a prerequisite to this Board assuming jurisdiction. The claim is not properly before the Board and must be dismissed.

If the claim were properly before the Board, it would be denied on its merits. The record shows that claimant was taken out of service about 9:30 A.M., March 22, 1979, pending an investigation for insubordination and violation of Rule E of the Rules for Conducting Transportation. On the same date claimant was notified by Carrier to attend a hearing on March 23, 1979:

"... to determine the facts and ascertain your responsibility, if any, in connection with your alleged violation of Rule E of the Rules for Conducting Transportation, wherein on Thursday, March 22, 1979, at 9:30 AM, you refused to follow a direct order given by your foreman to work with a gang."

Rule E reads in part as follows:

"Employes must devote themselves exclusively to the Company's service while on duty, render every assistance in their power to carrying out the rules and special instructions and promptly report to the proper official any violation thereof.

"To remain in the service, employes must refrain from conduct which adversely affects the performance of their duties, other employes, or the public. They must refrain, whether on duty or off duty, or on or off company property from conduct which brings discredit upon the company."

The claimant was afforded a fair and impartial hearing. There was substantial evidence adduced at the investigation, or hearing, in support of the charge against him. The discipline imposed by the Carrier was not arbitrary, capricious or in bad faith.

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 claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.