

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23475

Docket Number CL-23278

Josef P. Sirefman, Referee

PARTIES TO DISPUTE:

{ Southern Railway Company  
{ Brotherhood of Railway, Airline and Steamship Clerks,  
{ Freight Handlers, Express and Station Employees

STATEMENT OF CLAIM: "Carrier did not violate the agreement with the Brotherhood of Railway, Airline and Steamship Clerks as alleged, when it dismissed Mr. W. M. Murray, Yard Clerk, Atlanta, Georgia, from the service of the Carrier for cause on August 29, 1978.

Since the agreement was not violated, Mr. Murray is not entitled to eight hours' pay at the proper pro rata rate for Tuesday, August 29, 1978, and each work day thereafter on a Monday through Friday daily basis, as claimed in his behalf by the Clerks' Organization."

OPINION OF BOARD: Claimant Walter M. Murray, Yard Clerk, was notified by letter dated August 29, 1978 from Carrier's Agent Terminal Control that:

"For your failure to teletype a list covering 16 waybills from Inman Yard to Industry Yard, East point, Georgia, when instructed to do so by Assistant Agent Morrow on August 24, 1978, for abandoning your assigned position at about 8:30 PM on August 24, 1978, for threatening a Company Officer at about 3:45 PM, August 25, 1978, and for your insubordination in failing to attend investigation scheduled in my office 2:00 PM, August 29, 1978, your employment is terminated.

Yours truly,

B. L. Williams  
Agent Terminal Control"

On September 2, 1978 the Division Chairman requested that a hearing be held in connection with Claimant's dismissal. An investigation took place on September 8, 1978 and on September 11, 1978 the Superintendent informed Claimant in writing "that your termination will not be modified or revoked".

With respect to the August 24th incident Assistant Agent Morrow stated at the investigation that he twice asked Claimant to teletype the list, that Claimant did not do so, and after the second direction Claimant said that he was sick and left the position well before his shift was over. The record is clear that Claimant did not teletype the list, and at the investigation Claimant's response to why he walked out without completing his tour

was not based upon being sick. Rather Claimant stated:

"had headache--it wasn't enough to keep me off work, but it was just there and if you deal with person like Larry Morrow every day. Its just stuff built up...."

Claimant went on to say that his Supervisor nags him, and

"but I need a vacation from the job anyway. I need to get away. You stay on the job everyday doing the same thing everyday and things just pile up and pile up on you. I just need to get off. Just to forget about the job and get my mind clear.....It builds up sooner or later and you just can't hold it in."

Claimant also stated that he did not take medication, and added to his prior explanation that:

"It was same thing, well I felt I just had to go at that time. I don't believe in violence. I don't believe in it whatsoever, but I thought I might, would have resorted to violence if I just sat there. If I had sat there ten minutes longer. I mean everybody get like that every now and then."

Claimant additionally stated that the job was boring and he had a need to get away.

Assistant Agent Morrow also said that in a telephone call to him on August 25th at the property Claimant, calling from the outside, said that the "reason he didn't come to work (on August 25th-add. by Bd.) was that he would have kicked my ass, and that all I was was bullshit". Claimant, at the investigation, in response to the question "Did you threaten to kick his ass?" responded "I might have said that" and then went on to explain

"but see, it is like this. What's said man to man is said man to man. I mean is it not. I was sparked up. I wasn't on company property. I was at home calling on the telephone. I was talking to him, him alone. Southern Railway didn't have anything to do with that. What I said to him was man to man."

These explanations establish that Claimant refused to take orders, felt that he could leave work anything he determined to do so, and considered himself free to say anything he had on his mind to the Supervisor in whatever manner he saw fit. In view of the abundant evidence in the record that Claimant failed to follow his Supervisor's instructions and abandoned his position on August 24th and threatened his Supervisor in August 25th, ample evidence of disinterest in his job and disrespect for both his position and Supervisory authority, there is no need to consider whether the charge of failing to appear for investigation on August 29th was a proper one. Failure

to follow directions, job abandonment, and the threat, separately or together are sufficient basis for discipline. A review of the entire record establishes that Claimant received a fair and impartial hearing and that there is substantial evidence to sustain Carrier's decision to discipline Claimant. Given the seriousness of the violations and Claimant's poor record over a relatively short job tenure Carrier's decision to terminate Claimant was reasonable.

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 Agreement was not violated.

A W A R D

Carrier's position sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

*A. W. Paulsen*

Executive Secretary

Dated at Chicago, Illinois, this 8th day of December 1981.