

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23547
Docket Number CL-23707

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9268) that:

(a) Carrier violated provisions of the current Clerks' Agreement at Amarillo, Texas, on January 3, 1979, when it removed R. A. Conner from the service of the Carrier, and

(b) R. A. Conner shall now be reinstated into the service of the Carrier with all past rights restored on the basis they were prior to his dismissal from the service of the Carrier on January 3, 1979, and

(c) Mr. R. A. Conner shall now be compensated eight (8) hours pay each work day of Car Clerk Position No. 6065, at the rate of \$57.6381 per day since January 3, 1979, and the same for each work day of Position No. 6065, subject to wage increases, until he is reinstated to the service of the Carrier, and

(d) That all correspondence pertaining to this investigation be withdrawn by the Carrier and the transcript of the investigation from his personal record.

OPINION OF BOARD: Claimant R. A. Conner, a Station Clerk, was given a Notice of Investigation dated December 26, 1978 "concerning alleged threat to do bodily harm to Santa Fe employees on December 13 on telephone and in person in Assistant Agent's office", and irregularity of attendance in 1978. An investigation was held on January 3, 1979 and later that day Claimant was dismissed.

A review of the record establishes that this matter is properly before this Board. The record is also replete with direct testimony concerning threats of bodily harm made by the Claimant to various employees including the Carrier's Special Services investigators. Claimant, in speaking to those employees, made numerous references to possessing a firearm, knowing how to use it, and his accuracy at a substantial distance. Although Claimant stated at the investigation that it was not his intention to threaten he conceded that others could have taken what he said as a threat. There was substantial evidence in the record to support the Carrier's decision to discipline Claimant. No employer can countenance having its employees subjected to threats of violence by another employee. The dismissal was reasonable.

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. Paulsen

Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1982.



LABOR MEMBER'S DISSENT
TO
AWARD NO. 23447, DOCKET CL-23166
(REFEREE DENNIS)

The Referee committed serious error when he dismissed the Claim of the Organization on the basis of Carrier's belated suggestion that the Organization failed to cite specific rules when this Claim was being handled on the property.

Careful examination of all of the correspondence in the record indicates that not once while the claim was being handled on the property did the Carrier argue this point. The grievance involved in this Award received extensive "on the property" handling. The initial claims were filed on August 12 and 19, 1976. Over the next three years considerable correspondence was exchanged and several conferences occurred. Review of this extensive handling indicates that not once in writing or in conference did the Carrier allege a failure to cite the rules violated, thus alleging a violation of the Time Limit rules.

This Board has often held that such arguments are procedural and must be raised on the property. The failure to raise such arguments on the property is construed to be a waiver. Typical of the host of Awards on this subject are 10638 (LaBelle), 14903 (Dolnick) and 16727 (Engelstein).

The Carrier had ought not been permitted to escape decision of the claim on its merits by belatedly arguing that the

Time Limit rule was violated for failure to cite a rule when the claim was being handled on the property.

The Award is in error and requires dissent.



J. C. Fletcher, Labor Member

12-28-81

