

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23970
Docket Number MW-23779

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Welder James A. Harper for allegedly damaging company property and conduct unbecoming an employe was excessive and wholly and disproportionate to the charge (System File C-D-832/MG-2616).

(2) Welder James A. Harper shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for wage loss suffered."

OPINION OF BOARD: Claimant James A. Harper, a welder, with two years service, was charged with conduct unbecoming a Railway employe, with damaging Company property on July 26, 1979. An investigation was held on August 23, 1979, and subsequently Claimant was dismissed from service.

A review of the record before this Board establishes that Claimant, apparently feeling frustrated over a grievance that was not progressing to his satisfaction, drove his car into the car furnished to a supervisor by the Carrier, feigned injuries, claimed he was "Jesus Christ", and had to be taken from the property by a policeman. Clearly there was substantial evidence to sustain the Carrier's decision to discipline Claimant.

In weighing the penalty of termination it is instructive to consider the following question and answer at page 13 of the transcript:

"Q. Mr. Harper, do you believe you were acting in a rational manner while you were at Martin on July 26, 1979?

A. Not at face value. However, I knew what I was doing and I took this action knowing that it would lead to a Board of Inquiry and then we could get the situation straightened out."

There are ample procedures available to an employe claiming a grievance without resorting to such extreme and exceptional tactics. Claimant's bizarre behavior makes his conduct on the job wholly unpredictable and his termination 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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August, 1982.

