

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24060
Docket Number CL-24290

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9503) that:

(1) Carrier did violate the effective Clerk-Telegrapher Agreement when, on December 1, 1980, it unjustly dismissed Clerk Operator D. L. Jefferson from Carrier's service, and

(2) As a result of such impropriety, Carrier shall be required to reinstate Mr. D. L. Jefferson to his former position and compensate him for all wages lost, commencing December 1, 1980, and continuing until reinstated.

OPINION OF BOARD: Clerk Operator D. L. Jefferson was dismissed from the service of the Carrier on December 1, 1980, following a formal investigation after which he was found guilty of using profane vulgar language, conduct unbecoming an employe and threatening the Trainmaster. Prior to his dismissal, Claimant was one of nine former CRI & P Railroad (Rock Island) clerical employes hired by the B&O in August 1980, to perform service on the former Rock Island Subdivision under Agreement made March 4, 1980, commonly referred to as the "Miami Accord." The Board will examine three issues raised by the Claimant:

- (1) Whether a fair and impartial hearing occurred;
- (2) Whether there was sufficient evidence of record to find Claimant guilty of the charges; and
- (3) Whether the discipline should be dismissed.

First, it is the opinion of the Board that Claimant was given a full and fair hearing in compliance with Rule 47 of the Agreement. The record of the investigation clearly shows that the hearing was conducted in a fair and impartial manner with proper notice of the charges, sufficient time to prepare a defense, and the opportunity to present and cross-examine witnesses. The Claimant was present at the investigation and assisted by a representative of his choice.

Second, it is the opinion of the Board that there exists substantial evidence in the record to support the charges of using profane and vulgar language, conduct unbecoming an employe, and threatening the Trainmaster. Longstanding opinion of the Board clearly held that this Board will not upset the findings of a properly conducted investigation where there is substantial evidence to support the charges.

Third, it is the opinion of this Board that the seriousness and gravity of these offenses support the discipline as assessed by the Carrier and that this Board will not interfere with the discipline imposed.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

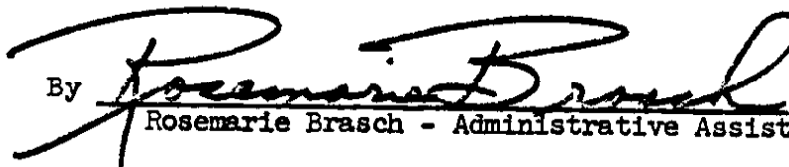
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.

