

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24572
Docket Number MW-24716

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(The Baltimore and Ohio Railroad Company

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

(1) The dismissal of Trackman J. J. Linn for alleged "conduct unbecoming an employee, being insubordinate to Officials of the Railroad Company and participating in an altercation with officials of the Railroad Company on Monday, August 11, 1980" was without just and sufficient cause and unwarranted (System File 2-MG-2993/ERRG-1716).

(2) Trackman J. J. Linn shall be reinstated with seniority, vacation and all other rights unimpaired and he shall be compensated for all wage loss suffered and for all other Agreement benefits including Health, Welfare and Dental Insurance coverage.

OPINION OF BOARD: Prior to his dismissal, Claimant was employed by the Carrier as a trackman on Carrier's Eastern Rail Gang, with about one year of service. The record shows that Claimant injected himself into and was involved in the controversy between the Claimant involved in Award No. 24571 and the Supervisor in connection with the removal of the Claimant in the prior case from the camp cars and the subsequent altercation that took place in the church parking lot, about one mile from the camp car site. On August 23, 1980, the Claimant in the present dispute was charged:

"Arrange to attend a hearing on September 2, 1980, at 9:30 a.m. in the offices of the Manager of Engineering, located in Room 300, Camden Street Warehouse, Camden and Eutaw Streets, Baltimore, Maryland.

You are charged with responsibility in conduct unbecoming an employee, insubordination to officials of the Railroad, and having an altercation with officials of the Railroad on Monday, August 11, 1980, in the vicinity of Fairfield, Pennsylvania.

The investigation is to determine your responsibility, if any, of conduct unbecoming an employee and being insubordinate to Supervisor Van Kirk in the Camp Cars of the Railroad at about 4:15 p.m., by refusing to leave such equipment when ordered by Supervisor Van Kirk. You then are charged with responsibility in provoking and having an altercation a short time after the episode in the Camp Cars off company property with Supervisor Van Kirk and Lt. Maloney of the Railroad Police Department.

"Arrange for your representative and/or witnesses to be present if desired."

The hearing was postponed and held on September 25, 1980, following which Claimant was dismissed from the service. A copy of the transcript of the hearing has been made a part of the record. A review shows that the hearing was conducted in a fair and impartial manner. None of Claimant's substantive procedural rights was violated.

In the hearing substantial evidence was adduced in support of the charges against the Claimant. It shows conclusively that Claimant interfered with the efforts of the Supervisor and others to peacefully remove the Claimant in Award No. 24571 from Carrier's property; that he cursed, taunted, and attempted to physically intimidate the Supervisor, and that he physically restrained one of the representatives of the Police Department from coming to the aid of the Supervisor who was being physically assaulted. The charge was more than adequately supported. The Claimant was clearly guilty of conduct that cannot be condoned.

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

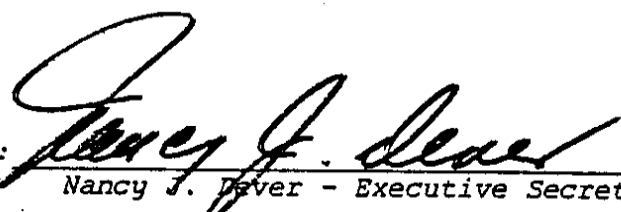
That the Agreement was not violated.

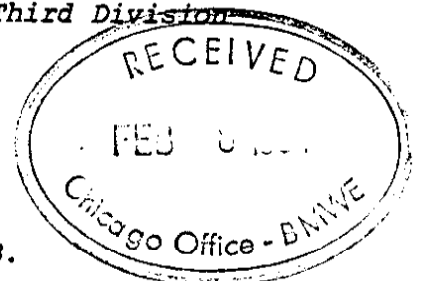
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary



Dated at Chicago, Illinois this 15th day of December 1983.