

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25957  
Docket Number MS-26236

John W. Gaines, Referee

PARTIES TO DISPUTE: (Mr. Arnold DeMaio  
(  
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

"(1) Was Arnold DeMaio in fact in violation of the applicable portion of Rule K which reads:

'Employees must ... attend to their duties during the hour prescribed and comply with instruction(s) ...' in that the organization claims that on June 22, 1984 at approximately 3:15 a.m., Arnold DeMaio failed to perform the assignment of removing 'power' at 5 track pursuant to instructions from Power Director E. DeVito?

Petitioner's response: NO

(2) Was Arnold DeMaio in fact in violation of the applicable portion of Rule L which reads:

'Employees shall not sleep while on duty ...' in that on June 22, 1984 while allegedly on duty at approximately 4:00 a.m., he was allegedly observed to be assuming an attitude of sleep in the E.T. locker room.

Petitioner's response: NO

(3) Was Arnold DeMaio in fact in violation of the applicable portion of Rule J which reads:

'Courteous conduct is required of all employees in their dealing with ... each other. Boisterous, profane or vulgar language is forbidden ... threatening ... other employees is prohibited ...' in that it is alleged that on June 22, 1984 he was boisterous, abusive and directed vulgar language towards Assistant Supervisor John Santo and allegedly directed profane and abusive language and voiced a threat to Power Director E. DeVito.

Petitioner's response: NO"

OPINION OF BOARD: Following trial on August 21, 1984, on several charges of unjustified conduct brought against him, Claimant was dismissed from Carrier's employment as Lineman in the Electric Traction Department on August 31, 1984.

The trial record contains sufficient evidence to support the charges, which Claimant has identified in his Statement of Claim.

The Board is an appellate body and thus does not weigh the evidence of record where, as here, sufficient evidence is shown to reasonably support the charges.

Carrier proved its charges and assessed dismissal as the appropriate penalty. We do not find its action to be arbitrary or excessive .

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

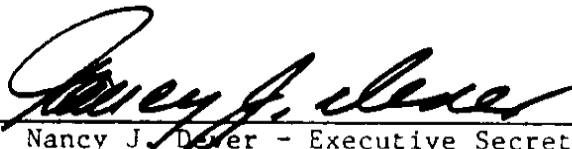
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 14th day of March 1986.