

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26337
Docket Number MW-26708

James R. Johnson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Chicago, Milwaukee, St. Paul and
(Pacific Railroad Company

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

(1) The dismissal of Mr. K. T. Lilly on June 29, 1984 and reaffirmed on July 30, 1984 was unwarranted, without just and sufficient cause and in violation of the Agreement (System File C#14-84/D2659-1).

(2) The claimant shall be reinstated with seniority and all rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed by the Carrier as a Trackman for approximately four years before his discharge. Under the Agreement in effect between these parties, discipline is assessed and an employee has a right to an Investigation, if he requests that one be held.

On June 29, 1984, the Claimant was terminated from the employment of the Carrier for:

- 1st. Threatening to strike your immediate supervisor with a spike maul. June 29th.
- 2nd. Being rude and very insubordinate / June 29 / and Harassing Mr. Dan Flaten after being fired from the Company by myself and Mr. Flaten, Assistant Foreman at 2:45 p.m.
- 3rd. Late for work on 29th. You and the people you ride with drove to the job site. This also was a violation due to the fact that the Company is liable for you during working hours and there is transportation provided by the Company.

The Claimant requested an Investigation, as provided in the Agreement, and the Investigation was scheduled to be held on July 25, 1984. Claimant was given proper Notice of the Investigation, but failed to appear at the scheduled time and place. The Organization requested a postponement when the Claimant failed to appear, and a recess was called to call the Claimant's

home. After being advised that Claimant had left the previous evening to attend the Investigation, the Carrier denied the request for postponement. The Hearing was conducted in absentia, and the discharge was upheld.

The Organization objects to the Carrier's refusal to postpone the Investigation, and argues that the Hearing was unfair because the Claimant was not present. The Carrier counters that it declined to postpone the Hearing, because it had transported several witnesses from Iowa, and Claimant made no timely request for a postponement. Further, it states that Claimant has not explained his absence, or given a reason for a postponement at any time during the handling of the case on the property. It concludes that it was appropriate to hold the Investigation in absentia under the circumstances.

The Board agrees with the Carrier's position. Claimant gave no reason for a postponement, or explanation for his failure to appear, either before or since the Hearing, and there is no obligation upon the Carrier to delay or incur additional expense or inconvenience under such circumstances. We find that it was proper to hold the Hearing in absentia.

With respect to the merits of the case, there is substantial evidence and testimony in the record to establish that the Claimant was guilty as charged. The offense of threatening and swinging a spike maul at one's Supervisor is, alone, more than sufficient to warrant the Claimant's discharge. We will deny the Claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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

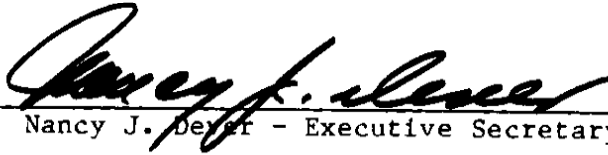
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 8th day of June 1987.