

Form

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27176
Docket No. MS-26740
88-3-85-3-494

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(D. J. Bates
PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: "That whereas on July 26, 1984 I was arbitrarily dismissed from the service of the Baltimore and Ohio Railroad Company without just and reasonable cause, therefore I, D. J. Bates, employee number 1630244, continue to seek relief from that adverse and arbitrary action in accordance with the following wage and benefit claim which includes requests for:

(a). Restoration to service with full seniority unimpaired and all employee benefits restored.

(b). Removal from my personnel record the entry which currently reflects the company's adverse decision against me in this case.

(c). Monetary compensation at the prevailing rate(s) of pay for wages lost from July 26, 1984 and each subsequent day thereafter on which I would be entitled to compensation, on a continuing basis, until I am properly restored to gainful employment in the service of the company.

(d). Timely payments of retirement tax, including company contributions, to the U. S. Railroad Retirement Board for and on my behalf until I am properly restored to gainful employment in the service of the company, so as to maintain continuity of 'months of service' and 'retirement tax credits' to which I would otherwise be entitled except for the company's adverse decision against me in this case.

(e). Monetary compensation in lieu of all employee benefits to which I am entitled under the prevailing wage and working agreements, including those denied at the time of my removal from service on July 26, 1984, and those which accrue during the period of my absence from service by reason of the company's adverse decision against me in this case."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was discharged for insubordination on July 26, 1984. Specifically, the Carrier determined that the Claimant had failed to comply with instructions when he did not mop the Data Center floor and perform other janitorial duties on June 22, 1984. On October 28, 1984, the Claimant was restored to service.

Initially, the Carrier raises two procedural objections. It contends this matter has not been handled in accordance with the Railway Labor Act because a conference was not held to discuss the claim. Secondly, the Carrier asserts the Claimant's claim was not appealed within the prescribed 60 day time limit set forth in Rule 48 of the Agreement. Under the singular facts of this claim, the Board does not consider the Carrier's contentions to be procedurally fatal.

A reading of the record establishes the Claimant was afforded a fair and impartial hearing despite his own actions. The Board further finds the Claimant was afforded an opportunity to prepare for and present a defense if he so chose. With respect to the actual charges, the record contains a note written by the Claimant on the very day the incidents leading to his discharge occurred. This note of June 22, 1984, is a specific and detailed admission of guilt and reads in pertinent part:

"During my tour of duty I did not perform any janitorial work. I hold that janitor work is inconsistent with my duties as P.I.C.L. clerk and clearly falls into the category of work which might be considered hazardous and demeaning, as contemplated by the above quoted rule. Moreover, I have repeatedly made known my views on this subject to local management."

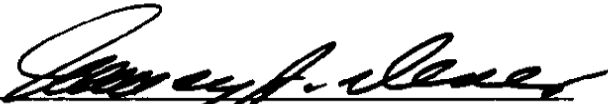
There is no probative evidence to support a charge that the work involved, whether or not completed before the Claimant reported, was detrimental to his health or safety. The Claimant had no right to refuse to do the work or report that it was, in fact, already done to the proper Carrier officer. Accordingly, we hold the record supports the action of the Carrier.

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 23rd day of June 1988.