

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(The Kansas City Southern Railway Company

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

(1) The dismissal of Track Laborer D. R. Williams for allegedly cursing and threatening his foreman and other members of Section 067 on August 8 and 18, 1986 and for alleged unauthorized absence on August 25, 1986 was unwarranted, arbitrary, capricious and a gross abuse of the Carrier's discretion (Carrier's File 013.31-357).

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

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 notified to attend a formal Investigation held on September 15, 1986. Among other charges, in connection with incidents that occurred on August 8 and 18, 1986, Claimant was alleged to have "cursed and threatened [his] foreman and other members of Section 067...." By letter dated October 8, 1986, Claimant was found guilty as charged and dismissed from the service of the Carrier.

The Board must direct its attention first toward the procedural issues raised by the Organization. We have carefully reviewed those issues, especially Rule 13, and find no support in the record for a violation by the Carrier of the Claimant's due process rights. Claimant was provided all his Agreement rights to a fair and impartial Investigation.

With regard to the merits, we find no support for the Organization's argument that the Foreman created the incident, nor any evidence in the transcript or on-property record that Claimant's extreme stress mitigates his behavior. The incident and circumstances of August 18, 1986, with supporting letters from the Foreman and Laborers confirm that Claimant was derogatory toward his Foreman, engaged in swearing and most importantly threatened him with physical harm. Claimant admits to same in his testimony. The evidence is substantial and conclusive that Claimant is guilty as charged.

The only question left for this Board to determine is whether in these circumstances the Carrier's assessed discipline was justified, or as the Organization argues, an unwarranted abuse of Carrier's discretion. Claimant physically threatened his Foreman. Claimant was properly charged and no facts in the record lessen Claimant's responsibility or justify his actions. This Board has often ruled under similar circumstances that threats and verbal assault result in dismissal (Third Division Awards 22055, 27893, 26527, 21299, 21245, 21043; Second Division Awards 11625, 7451).

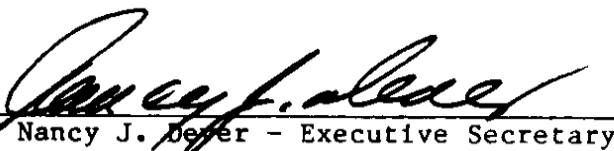
The Board finds no evidence of arbitrary, capricious or unwarranted abuse on the Carrier's part and will therefore leave the Carrier's action undisturbed.

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 27th day of April 1990.