

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30513  
Docket No. CL-28834  
94-3-89-3-233

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

(Transportation Communications International  
( Union  
PARTIES TO DISPUTE: (  
(Soo Line Railroad Company

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

- (1) Carrier's action in the dismissal from service of Ms. R. (Rewolinski) Schwab, seniority date of 9-26-81, Clerk, Milwaukee, Wisconsin, effective October 21, 1988, was excessive, discriminatory, arbitrary and capricious.
- (2) Ms. R. (Rewolinski) Schwab shall have her record cleared of all charges which may have been placed against her as a result of this case.
- (3) Ms. R. (Rewolinski) Schwab shall be reinstated to the service of the Carrier with seniority and other rights unimpaired.
- (4) Ms. R. (Rewolinski) Schwab shall be compensated for all wages and other losses sustained account of her dismissal."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

This claim comes to the Board on remand from the United States District Court, Eastern District of Wisconsin. On October 21, 1988, Carrier dismissed the Claimant, who was then on the Extra

List in Milwaukee, Wisconsin, having held GREB Board No. 21 position until August 7, 1988. Claimant's seniority date was September 26, 1981.

The Organization then filed a claim challenging the discharge under the provisions of the collective bargaining agreement between Carrier and the Organization. When that claim was denied on the property, the Organization appealed the discharge to this Board.

The Organization advanced three arguments in its appeal from Carrier's decision on the property: (1) that Claimant was unable to properly prepare for the Investigation because Carrier allegedly changed the dates of the incidents under investigation from those listed in the charge; (2) that the Carrier improperly refused to accept Organization Exhibit No. 1, identified as the Yardmaster's "sign-out sheet" for Train Crews and Clerks; and (3) that the Carrier failed to carry its burden of proving that Claimant falsified her timeslips.

The Board agreed with Carrier's position as to all three issues and dismissed the Claim in its entirety in Third Division Award 28934, issued August 29, 1991.

On December 11, 1991, Claimant filed a Complaint in the United States District Court for the Eastern District of Wisconsin (hereinafter "the Court") in Case No. 91-C-1323. The Complaint was filed against the Board and Carrier. Claimant was represented by a privately retained attorney in this federal action and not by the Organization. The Organization was not made a party to this federal Complaint.

The Complaint in Case No. 91-C-1323 alleged in part:

"11. That the procedures employed in the Formal Investigation and NRAB review were fundamentally unfair; that the procedures therein resulted in the plaintiff's case being ineptly prepared and presented; and that the presentation of her case was to a decision-making body which was not impartial; all of which violated her due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

12. That, accordingly, the NRAB failed to confine itself to the scope of its jurisdiction under the National Railway Act.

.....

14. That the decisions of the NRAB and the Formal Investigation are void."

The Complaint also alleged that the proceedings on the property and before this Board were "without foundation in reason or fact, and were otherwise wholly baseless", and that they "were tainted by fraud, corruption and/or bias." Id. pars. 10, 13. Claimant's Complaint also requested the Court to declare "the actions by the NRAB and the Formal Investigation to be null and void." Her Complaint further requested an Order "[r]emanding this matter for a new Formal Investigation in a manner which preserves and provides for the plaintiff's right to due process and her rights under the Railway Labor Act."

On March 23, 1992, the Court dismissed the Board as a party to Claimant's federal action. Carrier then moved to dismiss Claimant's Complaint. In the alternative, Carrier requested summary judgment in its favor. Claimant requested the Court to set aside the Board's Award and to remand the claim for administrative proceedings.

The Court issued its Order on June 15, 1992. (The Court's Order will hereinafter be referred to as "the Order"). The body of the Order stated as follows:

"Having reviewed the moving papers of the parties, the court concludes that it is not undisputed that the Plaintiff was accorded due process as to notice and other procedures before the NRAB. See Kotakis v. Elgin, Joliet & Eastern Railway Company, 520 F.2d 570, 575 (7th Cir.), cert. denied, 423 U.S. 1016 (1975) (lack of due process is recognized as a legitimate ground for objecting to an award of the Railroad Adjustment Board). Therefore, the court will remand this action to the NRAB in order that the plaintiff might have a hearing which comports with due process. In reaching this decision, the court had made no evaluation of the underlying merits of the Plaintiff's position.

For this reason, the court ORDERS that the 'Motion for Soo Line Railroad Company for Dismissal or in the Alternative for Summary Judgment' (filed April 27, 1992) IS DENIED without prejudice.

IT IS FURTHER ORDERED that the 'Motion [sic] and to Set Aside NRAB Order and for Remand' (filed May 11, 1992) IS GRANTED. The National

Railroad Adjustment Board Award No. 28934 IS  
VACATED and this action is remanded to the  
NRAB for further proceedings in keeping with  
this decision."

Id. at pages 1, 2.

The Court specified that its Order would not be considered "a dismissal or disposition of this matter (Case No. 91-C-1328)" and that the Court "has made no evaluation of the underlying merits of [Claimant's] position." It further stated that Claimant's action in that case could be reopened when either Carrier or Claimant advised the Court that the "administrative proceedings have concluded and that the parties are ready to proceed". Id. at page 2.<sup>1</sup>

The Board did not receive a copy of the Court's Order until some time after July 19, 1993, when Claimant's attorney requested the Clerk of the District Court to send a copy of the Order to the NRAB so that the Board could consider the remand. On October 27, 1993, the Board notified Claimant's attorney that a hearing before the Third Division had been scheduled for March 18, 1994.

On February 28, 1994, Claimant filed a Notice of Motion and Motion for Remand to Soo Line for Rehearing with the Board.. That Motion requested the Board to "reman[d] this matter to the SOO LINE formal investigation level, for a hearing on all issues, because: (1) [Claimant] did not receive a fair hearing and due process of law in the formal hearing (as found by the Federal District Court, Eastern District of Wisconsin, in its Decision dated and filed June 15, 1992 ...); (2) [Claimant] did not receive fair representation from her union representative at the first hearing."

Claimant was represented at the March 18, 1994 hearing by her attorney. Carrier was represented by its Manager of Labor Relations. Claimant's attorney contended that in order to comply with the Court's Order, the Board must remand the Claim to the property for a new formal Investigation and hearing.

Carrier argued that the Order did not require a remand to the property and that the Court had only ordered a new appellate

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<sup>1</sup> On October 13, 1992, Claimant filed a federal court complaint in Case No. 92-C-1072 against Carrier and the Organization. That complaint alleged that the Organization breached its duty of fair representation to Claimant in the formal Investigation on the property and in the appeal to this Board. The complaint also alleged that Carrier and the Organization breached their collective bargaining agreement with respect to those proceedings.

hearing before the Board. Carrier also asserted that the evidence developed at the hearing held on the property on October 6 and 10, 1988 supported the Board's earlier conclusion to dismiss the Claim. Carrier requested the Board to reaffirm its earlier Award in this matter.

As both Claimant and Carrier recognized, this Board is bound by the Court's Order. The Board must therefore take that Order as the law of the case in this matter. However, in resolving the competing interpretations of the Court's Order, the Board must presume and conclude that the Court acted within its jurisdiction over matters arising under the Railway Labor Act.

The Board has carefully examined the Court's Order and reviewed the record on appeal from the property. As explained below, the Board concludes that: (1) the Court did not order this matter remanded for a new hearing on the property; (2) the Court did not make any determinations as to the merits of Claimant's due process challenges to Carrier's actions on the property, either under the due process provisions of the contract or under those of the U.S. Constitution; (3) Claimant was accorded Constitutional due process in the March 18, 1994 hearing on remand before the Board; and (4) Claimant's claim against Carrier is denied for the reasons stated in this Opinion and Award on Remand, as well as those stated in Award No. 28934. The Board hereby restates and reaffirms Award No. 28934, which is attached as an Appendix to this Opinion and Award on Remand, and incorporates it by reference in this Opinion and Award on Remand.

**1. The Court did not order a new hearing on the property. In addition, the Court did not make any determinations as to the merits of Claimant's due process challenges to Carrier's actions on the property, either under the due process provisions of the contract or under those of the U.S. Constitution.**

Claimant's federal court Complaint in Case 91-C-1323 challenged the proceedings on the property as well as those before this Board. She asserted that her "due process rights" under the United States Constitution were violated by "the procedures employed in the Formal Investigation and the NRAB review" (Complaint, par. 11). Claimant's brief to the Court argued in detail that both proceedings deprived Claimant of such Constitutional "due process". Claimant's Complaint also requested the Court to void both the Award of the NRAB and Carrier's actions on the property as violations of such Constitutional due process.

The Court made no findings as to the propriety of the proceedings on the property. Rather, the Court properly confined itself to the Board's appellate review of Carrier's disciplinary action. The Court found that "it is not undisputed that the Plaintiff was accorded due process as to notice and other procedures before the NRAB." Court Order, page 1 (emphasis added).

The Court then "remand[ed] this action to the NRAB in order that the plaintiff might have a hearing which comports with due process". Id., page 2 (emphasis added).

The Court limited its Order in that manner because the Court did not have jurisdiction to review the proceeding on the property. As a result, the Court did not determine that "[Claimant] did not receive a fair hearing and due process of law in the formal hearing" on the property, as Claimant contended in its February 28, 1994 Motion to this Board.

It has long been settled that an employee cannot challenge a carrier's actions on the property under the due process provisions of the U.S. Constitution unless those actions "can be fairly attributed to the federal government." Morin v. Consolidated Rail Corporation, 810 F.2d 720, 125 LRRM 2546, 2647-48 (7th Cir. 1987); Anderson v. National Railroad Passenger Corp., 754 F.2d 202, 118 LRRM 2673, 2675 (7th Cir. 1985).

In Morin and Anderson, the Seventh Circuit held that Constitutional due process protection did not apply to proceedings on the property conducted by Conrail and Amtrak. Morin, supra; Anderson, supra. No facts were presented to the Court to support a different conclusion with respect to the Soo/Milwaukee System.

Moreover, the mere fact that the Board enforced Carrier's disciplinary decision does not bring the due process provisions of the U.S. Constitution into play with respect to Carrier's actions on the property. Edwards v. St. Louis-San Francisco Railroad Co., 361 F.2d 946, 62 LRRM 2301, 2305 (7th Cir. 1966).

In the absence of conduct by Carrier attributable to the federal government, therefore, Claimant has no Constitutional claims of due process against Carrier. In Edwards, the Seventh Circuit held that "the federal courts are not the guarantors of any rights of either labor or management at the initial hearing, either by force of the Constitution or the Railway Labor Act for, as we have said, at that stage the dispute is between private parties and the applicable procedure for settling the dispute is governed by the contract between them." Id., at 2305-06.

This Board must, therefore, conclude that the Court did not apply the U.S. Constitution to any of Carrier's actions on the property, since the Court would not have had jurisdiction to do so.

For similar reasons, the Board concludes that the Court did not determine that Carrier's actions on the property violated Claimant's "due process" rights under the collective bargaining agreement between Carrier and the Organization.

It is well settled that federal district courts have no jurisdiction under the Railway Labor Act over such claims. In

Edwards, the Seventh Circuit affirmed the district court's decision that it had no such jurisdiction over claimed due process violations of the contract on the property. The Court of Appeals held as follows:

"The provisions of the Railway Labor Act govern neither the procedure by which a carrier may discharge its employees nor the conduct of an investigation hearing on railroad property ... Therefore, when a railroad employee questions the propriety of the initial hearing held on carrier property, his claim must be based on the provisions of the collective bargaining agreement relating to the subject."

Edwards, supra, 62 LRRM at 2305 (emphasis added; citations omitted).<sup>2</sup>

Edwards remains the controlling law in the Seventh Circuit. See Kulavic v. Chicago & Illinois Midland Railway Co., 1 F3d. 507, 515 (7th Cir. 1993) (analyzing employee rights under the Railway Labor Act); Holmes v. Elgin, Joliet & Eastern Railway Co., 815 F. Supp. 279, 284 (N.D. Ind. 1992) (claim asserting right to counsel in proceedings on property); Kozina v. Baltimore and Ohio Chicago Terminal Railroad, 609 F. Supp. 53, 106 LC par. 12,343 (N.D. Ill 1984), page 27,636 (claim that employee was discharged without a proper hearing); Golombowski v. Northwestern Transportation Co.,

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<sup>2</sup> This Board has often stated this same proposition. It has long been the policy of this Board to "determine whether in the proceedings on the property ... the employee was afforded due process..." Award No. 18352, page 2. However, it is also well-settled that the "due process" applicable to the proceedings on the property and before the Board are derived only from the parties' collective bargaining agreement and not from the U.S. Constitution. As this Board explained in Third Division Award 15676:

"[t]he 'due process of law' clause of the U.S. Constitution's Fifth Amendment applies its force on the Federal government. The 'due process of law' clause of the Fourteenth Amendment applies its force on the governments of the States. Those who are employed by railroads must look to their collective bargaining agreements or to legislation for rights such as are sought in this proceeding."

Id. at page 3 (emphasis added).

See also Award No. 18352 at page 2.

447 F.Supp. 738, 97 LRRM 3220, 3222 (E.D. Wis. 1978) (claim that hearing on property did not provide "all the constitutional rights of due process").

Many other courts have cited Edwards for this proposition. See e.g. Watts v. Union Pacific Railroad Co., 796 F.2d 1240, 122 LRRM 3036 (10th Cir. 1986) (claim based on absence of representation by counsel on the property); American Federation of Railroad Police v. National Railroad Passenger Corporation, \_\_\_ F.Supp. \_\_\_, 112 LC par. 11,388 (E.D. N.Y. 1989), page 26,004 (challenging Board's enforcement of Carrier's discharge decision that placed primary reliance on hearsay evidence); Ramey v. Chesapeake & Ohio Railway Corp., \_\_\_ F.Supp. \_\_\_, 118 LRRM 2103-04, fn. 1 (S.D. W.Va. 1983) (asserting unspecified due process violations on the property); Wenzel v. Chesapeake & Ohio Railway Co., \_\_\_ F.Supp. \_\_\_, 89 LRRM 2538, 2540-41 (E.D. Mich. 1974) (challenging hearing conducted by representative of carrier and alleged error in notice of hearing).

As a result, it is the Board's conclusion that the Court did not consider or determine whether Carrier's actions on the property violated Claimant's due process rights under the U.S. Constitution or under the collective bargaining agreement. The Court did not have jurisdiction to conduct either inquiry.

The District Court based its jurisdiction on the principle that "lack of due process is recognized as a legitimate ground for objection" to an Award of the Board. Kotakis v. Elgin, Joliet & Eastern Railway, 520 F.2d 570, 90 LRRM 2966, 2969 (7th Cir. 1975), cert. den. 423 U.S. 1016 (1975). See Morin, 124 LRRM at 2647.

However, the Court of Appeals had earlier held that a District Court's jurisdiction over such due process claims extended only to "conduct of the National Railroad Adjustment Board in making the award...." Edwards, 62 LRRM at 2304 (emphasis in original). The Kotakis decision cited Edwards. Kotakis, supra, 90 LRRM at 2969.

This Board's earlier appellate hearing in this matter, which resulted in Award No. 28934, was the only proceeding involving "conduct of the National Railroad Adjustment Board in making the award", Edwards, supra, 62 LRRM at 2304, and was thus the only hearing over which the Court assumed jurisdiction under Kotakis.

Therefore, the Board must also conclude that when the Court remanded this matter for a "hearing which comports with due process", it was referring to an appellate-level hearing before the NRAB in which this Board would again review the proceedings on the property.

2. The March 18, 1994 hearing on remand before the Board complied with the Court's Order that the hearing on remand be consistent with due process.



The Court determined that "it is not undisputed that [Claimant] was accorded due process as to notice and other procedures before the NRAB". This Board's March 18, 1994 hearing on remanded complied with the Court's Order "that the plaintiff might have a hearing which comports with due process."

In the hearing on remand, Claimant was provided with an opportunity to assist in the preparation of her appeal to the Board from the proceedings on the property. She received notice of the Board's March 18, 1994 hearing on remand. Claimant was represented at that hearing by counsel of her choice. Her attorney had the opportunity to be heard and to present arguments to this Board. Claimant's due process rights under the U.S. Constitution were thus satisfied with respect to this appellate hearing.

In its brief to the Court and arguments to this Board at the hearing on remand, Claimant asserted several other ways in which the Board violated Claimant's due process rights under the U.S. Constitution in its prior hearing and in Award No. 28934. None of these could have been the basis for the Court's Order that a hearing on remand be held that "comports with due process."

Thus, Claimant asserted that the Board violated Claimant's Constitutional due process rights when it "summarily rejected Organization's Exhibit No. 1 because it was prepared by Mr. Schwab", when it "dismiss[ed] the corroborating testimony of Mr. Schwab because he married the plaintiff (after the dates in issue)", and when it "affirm[ed] a decision which was based on charges not properly contained in the notice given to [Claimant]" (Claimant's May 11, 1992 brief to the Court, pages 10-11).

However, a "due process" challenge under Kotakis cannot be based on the Board's rulings on the merits of Claimant's claim under the collective bargaining agreement. As the Court of Appeals held in Kotakis, "the interpretation of railroad collective bargaining agreements is for the Adjustment Board rather than the courts." Kotakis, supra, 90 LRRM at 2970. Rather, such rulings are subject to judicial review of the merits of Board decisions, and not to judicial review of the Board's proceedings with respect

to Claimant's due process rights under the U.S. Constitution. Id.<sup>3</sup>

As a result, these allegations are not subject to due process review under Kotakis, since they attempt to "convert" rulings of this Board on the merits of Claimant's contractual claim "into violations of Constitutional due process because of [her] disagreement [with the Board's conclusions] therewith...." Id., 90 LRRM at 2970.

In addition, Claimant contended that the NRAB decision violated Claimant's Constitutional due process rights because it was based upon a hearing "chock full of conflicting interests"; e.g. that the presiding officer "was judge, jury and prosecutor" and that Claimant's representative at the hearing was an employee of Carrier and a subordinate of Carrier's main witnesses. (Claimant's May 11, 1992 brief to the Court, pages 11-12).

However, as the Seventh Circuit stated in Edwards:

"[t]his is the procedure provided in the collective agreement between the railroad and [the claimant's] union and it is the procedure contemplated by the Railway Labor Act. ... [citation omitted] Under the Act, [the claimant] was entitled to a completely impartial hearing only when the case reached the referee designated to sit with the Board. As long as the final hearing officer was impartial, the requirements of due process were satisfied."

Edwards, supra, 62 LRRM at 2304 (emphasis added, quoting D'Elia v. New York, New Haven & Hartford Railway Co., 338 F.2d 701, 702, 57 LRRM 2606 (2d Cir. 1964)).

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<sup>3</sup> The scope of a federal court's judicial review of the merits of NRAB decisions is "among the narrowest known to the law". Union Pacific Railroad Co. v. Sheehan, 439 U.S. 89, 99 LRRM 3327, 3328 (1978). See also, Chicago & Northwestern Transportation Co. v. United Transportation Union, \_\_\_ F.2d \_\_\_, 134 LRRM 2607, 2608 (7th Cir. 1990); Morin, supra, 124 LRRM at 2647. Under that narrow standard of review, federal courts can invalidate an NRAB decision as to the merits of a contractual claim only when the Board's decision is "'actually and undisputedly without foundation in reason or fact'" or "'wholly baseless and without reason'", and therefore "outside the 'matters within the scope of the division's jurisdiction.'" Kotakis, supra, 90 LRRM at 2969 (citations omitted). While Claimant's Complaint in Case 91-C-1323 raised these issues, the Court specifically stated that it did not reach the "underlying merits of [Claimant's] position" in issuing its June 15, 1992 Order. (Court's Order, page 2).

No argument, assertion or evidence was presented to the Court challenging the impartiality of the referee in this matter.

The Board further notes that Claimant was represented on the property by a "duly accredited representative", as provided by Rule 28 of the applicable agreement.

Claimant also asserted that Claimant was "deprived of the opportunity to assist in the preparation of her case at ... the formal investigation...." (Claimant's May 11, 1992 brief to the Court, page 10). In addition, she contended that evidence of Officer Flaten's "bias" against her was "not presented to the formal investigation or the NRAB" because her representative at the hearing "was in bed with the other formal investigation players". Id., at page 12.

Neither assertion raises Constitutional due process issues. In addition, neither assertion comes under this Board's review of the merits of Claimant's claim that Carrier violated the contract by discharging her. Rather, these allegations must be resolved under the federal law governing the Organization's duty of fair representation to Claimant.

3. Having considered Claimant's arguments on remand to reverse Carrier's discharge of Claimant, the Board concludes that the discharge must be affirmed. The Board also restates and reaffirms Award No. 28934, which is attached as an Appendix to this Opinion and Award on Remand, and incorporates that Award by reference in this Opinion and Award on Remand.

As this Board held in Award No. 18352, "in discipline cases, the Board sits as an appellate forum to determine whether in the proceedings on the property: (a) the employee was afforded due process; (2) substantial evidence was adduced to support the Carrier's finding of the employee's guilt as charged in whole or in part; and, (c) the assessed discipline was reasonable and neither arbitrary nor capricious." Award No. 18352, page 2. In particular, Rule 26(b) of the agreement on the property provides that "the investigation will be held in a fair and impartial manner."

This Board has reviewed the transcript and exhibits comprising the record of this matter. It has also considered Claimant's challenges to the proceedings on the property and to this Board's earlier decision in Award No. 28934. As explained below, the Board concludes that no new hearing is warranted and that the discharge must be sustained.

Claimant argued that the proceedings on the property were invalid because the hearing officer was the "judge, jury and prosecutor". (Claimant's May 11, 1992 brief to the Court, page 11). However, that is the procedure provided by the collective bargaining agreement between Carrier and the Organization which is

Claimant's exclusive bargaining representative. As this Board reiterated in Award No. 18352, "[t]he Board is without jurisdiction to add to, subtract from, or otherwise vary the terms of the Agreement. It has no jurisdiction to set aside the expressed terms of the Agreement and substitute its sense of justice--fairness or hardship--in the place and stead of what the parties have agreed to." Award No. 18352, page 1.

As discussed supra, Claimant also faults the Board for "summarily reject[ing] Organization's Exhibit No. 1 because it was prepared by Mr. Schwab", "dismissing the corroborating testimony of Mr. Schwab because he married the plaintiff (after the dates in issue)" and "affirming a decision which was based on charges not properly contained in the notice given to [Claimant]." (Claimant's May 11, 1992 brief to the Court, pages 10-11).

The Board has reviewed the record concerning these issues and has carefully considered these contentions. The first and third allegations cited above were raised by the Organization in its appeal to the Board and were fully addressed in Award 28934.

The second assertion does not accurately state the Board's holding in that Award. The Board notes that Claimant was married to the Yardmaster when the Investigation was held (pages 4, 53 of the transcript). In Award No. 28934 (at page 4), the Board noted that the Yardmaster:

"...is the husband of the Claimant. While the Board does not automatically assume that his testimony was not credible on that account, that factor causes that Board to examine his testimony very closely for other credibility factors. When viewed in context with the timesheets and payrolls for these dates, and other evidence noted below [that Claimant was not eating lunch or working when the Trainmaster observed her in the Yardmaster's truck], the Board concludes that the testimony of Claimant and her husband was simply not as credible as that of the Carrier's witnesses."

The Board reaffirms this specific holding.

As discussed supra, Claimant's allegations as to the adequacy of her representation by the Organization on the property and before this Board must be evaluated under the Organization's duty of fair representation to Claimant. Those issues are not part of this Board's appellate review of the Carrier's decision to discharge Claimant.

Claimant's other objections to Award No. 28934 have been identified in the discussion, supra, concerning her assertions that

the Board violated her due process rights under the U.S. Constitution.

For the reasons stated above, the Board concludes that in the proceedings on the property: (a) Claimant was afforded due process under the contract; (2) substantial evidence was adduced to support the Carrier's finding of Claimant's guilt as charged in whole or in part; and (c) the assessed discipline was reasonable and neither arbitrary nor capricious. Award 18352, page 2. Claimant's claim against Carrier is denied for the reasons stated in this Opinion and Award on Remand, as well as those stated in Award 28934. The Board restates and reaffirms Award 28934, which is attached as an Appendix to this Opinion and Award on Remand, and incorporates that Award by reference in this Opinion and Award on Remand.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 9th day of November 1994.