

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30787
Docket No. MS-31386
95-3-93-3-285

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Edward DeAngelo
PARTIES TO DISPUTE: (
(The Long Island Rail Road

STATEMENT OF CLAIM:

"Should the petitioner have been placed on sick leave rather than terminated, and if so, what remedy is the petitioner entitled to?"

FINDINGS:

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

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 waived right of appearance at hearing thereon.

On April 7, 1992, Claimant was involved in an altercation with a passenger. Claimant was held out of service and on April 16, 1992, Claimant was notified of an Investigation, to be held April 22, 1992. The notice charged Claimant with conduct unbecoming an employee. The Investigation was held as scheduled and continued on April 27, 1992. On May 2, 1992, Claimant was advised that he had been found guilty of the charges and was dismissed from service.

Claimant contends that he should have been placed on sick leave rather than dismissed from service. Claimant maintains that the incident in question was caused by his emotional disability and that Carrier was aware of the disability. Claimant contends that he was only partially coherent at the time and that his irrational actions clearly were the result of his disability. Claimant contends that his situation called for help rather than discipline.

Carrier contends that it proved the alleged violation. Carrier further argues that Claimant's prior record, which included similar offenses, a suspension and two dismissals followed by reinstatement justified dismissal for this incident. In Carrier's view, Claimant's argument amounts at most to a plea for leniency, a matter which lies in the Carrier's sole discretion and is beyond the Board's authority.

The Board has reviewed the record. We conclude that substantial evidence supports the finding made on the property that Claimant was guilty of the charge. The evidence established that Claimant, a Station Cleaner, was involved in an altercation with a passenger in the station waiting room. Claimant's Supervisor testified that Claimant was yelling at the passenger and described the passenger's demeanor as low key. The Supervisor further testified that he told Claimant to leave the waiting room to cool down and that, although Claimant initially did so, he returned shortly thereafter and continued the confrontation with the passenger. The Supervisor's testimony was corroborated by the ticket Agent, who testified to hearing Claimant yell profanities at the passenger.

The record further supports the penalty imposed. Claimant had been suspended, was discharged twice and was reinstated each time. Claimant's prior record includes discipline for similar misconduct. It is clear that Carrier has given Claimant ample opportunity to deal with his emotional problems and to learn to avoid having them interfere with his job performance. Claimant has failed to do so. Under these circumstances, we cannot say that discharge from service was arbitrary, capricious or excessive.

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 6th day of April 1995.