

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30996  
Docket No. CL-31753  
95-3-94-3-10

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

(Transportation Communications  
( International Union  
PARTIES TO DISPUTE: (  
(Illinois Central Railroad

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11002) that:

- (1) Carrier violated the effective agreement when, following an investigation held on December 21, 1992, it dismissed Mr. L. C. Marshall from its service effective December 30, 1992.
- (2) Carrier shall now reinstate Claimant Marshall to service with his seniority and all other rights unimpaired; shall compensate him for all time lost and shall clear his record of the charges placed against him."

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 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.

On December 11, 1992 Claimant became involved in an altercation with a private security officer engaged to protect Carrier's Piggyback premises, which culminated in the local police being called with Claimant being arrested, removed from the property by the police and booked on several charges.

An Investigation was timely scheduled, and on December 30, 1992 Claimant was dismissed from service.

The security guard, who was the principle complaining witness, testified in detail as to what transpired. Claimant countered the security guard's testimony denying physical contact of any sort and blamed the arresting police officer for over-reacting. A second security guard testified that while he did not see any of the alleged grabbing or spitting, both participants were hollering.

It is a fact that Claimant's arrest went nowhere. The charges were dropped, but it does not offset the fact that Claimant's reaction to the arresting police officer caused his arrest and removal from the property shortly after Claimant had commenced work.

This Board does not judge the credibility of the witnesses. That is best left to those in attendance at the Investigation who witnessed those testifying firsthand. The Hearing Officer accepted the testimony of the principle security guard over that of Claimant and the second security guard who's testimony did not do much to corroborate his fellow guard.

The Carrier did establish its charges with sufficient evidence to establish that Claimant's handling of the situation escalated from a simple question to an arrest and removal from the property by the police.

Claimant's inability to control his outbursts of anger is grounds for discipline, but dismissal in this instance is too severe. The two plus years Claimant has been out of service, when coupled with his past record, is sufficient.

Claimant is to be reinstated to service with full seniority and all other rights unimpaired, but without any compensation.

#### AWARD

Claim sustained in accordance with the Findings.

#### ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 26th day of July 1995.