

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 32106
Docket No. MS-31917
97-3-94-3-282

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

(Donald L. White

PARTIES TO DISPUTE: (

(Meridian & Bigbee Railroad Company

STATEMENT OF CLAIM:

"Claim:

Where was I insubordinate, all of my work orders was completed daily.

I never denied work from a superior.

I think I was abused, harassed and discriminated by both (Supervisor) Samuel Hudnall, & Butch Thomas

(1) Parties:

- (A) Samuel Hudnall
- (B) Bill Kahlmus
- (C) Johnny Alexander

(2) Statement of Claim:

- (A) On the 8th of Sept. '93', I was working as a laborman and I only made a comment.
- (B) On the 10th of Sept. '93' I was acting Foreman, my order was to install cross ties at m.p. 15.4, all work was accounted for.
- (C) On the 13th of Sept. '93' my orders was to install cross ties at m.p. 15.4, once again all work was performed."

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.

This Board has reviewed the claim as handled on the property. The Board finds that the Claimant requested a formal Hearing following the Carrier's notification that he had been terminated from service effective October 13, 1993. After postponement, a Hearing was held on November 23, 1993 and the Carrier subsequently reaffirmed its dismissal of the Claimant. Thereafter, the claim of unjust dismissal was properly appealed under the Agreement on the property. It was conferenced and formally denied by Carrier letter dated January 4, 1994.

The Board now finds before it a "Claim" and "Statement of Claim" with named parties, positions and facts presented by the Claimant which are at wide variance with the termination issue conferenced on the property. The Claimant argued before us that this refers to the very same issue and circumstance. The Claimant argues that he has a proper claim and was unjustly terminated. A careful review requires the Board to dismiss the claim. Our jurisdiction is explicitly limited by the requirements of Section 3, First (i) of the Railway Labor Act, as amended, and Circular No. 1 of the Board. We may only decide those cases where the parties have handled the claim on the property and presented it to this Board "in the usual manner" and within the Rules of the Agreement. This claim has not been handled "in the usual manner." There is no record of any discussion of any claim handling alleging abuse, harassment or discrimination or any Rule violation associated therewith. The claim handled on the property was the Claimant's dismissal of October 13, 1993, which is not now before us.

Even if, arguendo, the claim were proper, which it is not, it would fail. The Claimant argues that the on-property correspondence is over incidents of September 8, 10 and 13, 1993 for which he was unjustly terminated for insubordination when in fact "all work was performed." The Claimant argues that this is the claim properly conferenced before us. The Board finds the Carrier's termination of the Claimant for insubordination fully supported by the testimony and record. However, the claim handled on the property for unjust termination of employment is a different claim than before us. Therefore, this claim is procedurally defective and dismissed on procedural grounds.

AWARD

Claim dismissed.

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 July 1997.