

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35317
Docket No. MW-34196
01-3-97-3-688**

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

PARTIES TO DISPUTE: (
(Brotherhood of Maintenance of Way Employes
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Mr. H. A. Tidwell for alleged violation of Rules 1.6 and 1.9 in connection with alleged ‘. . . threats against your fellow employees. This is most recently evidenced by your actions during the week of July 29, 1996, during a conversation with two contractors in the Utility Office in Pine Bluff.’ was arbitrary, capricious, unjustified and in violation of the Agreement (System File MW-96-44-CB/MW D96-48).**
- (2) As a consequence of the violation referred to in Part (1) above, the Claimant shall be reinstated to service with seniority and all other benefits unimpaired, his record shall be cleared of the charges leveled against him 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 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.

Rule 1.6 prohibits employees from being quarrelsome, discourteous, and disloyal and indicates that "any act of hostility, misconduct or willful disregard or negligence affecting the interests of the Company or its employees is sufficient cause for dismissal and must be reported." Rule 1.9 contains a policy concerning violence in the work place and defines the term "violence" to include any act of physical aggression and also to include threats by words or actions. Rule 1.9 explicitly announces that the Carrier will view alleged jokes as possible genuine threats and therefore cautions employees to avoid such comments. Rule 1.9 provides that the Carrier will view any act of violence in a serious manner and will discipline any employee who violates the policy by initiating disciplinary action up to and including termination.

Rule 1.6 and Rule 1.9 constitute reasonable and properly disseminated work Rules. Employees have an affirmative obligation to conduct themselves appropriately in the workplace. Employees who deviate from acceptable standards of conduct do so at their own peril and jeopardize their continued employment with the Carrier because of the impact of inappropriate behavior on the Carrier and their fellow employees.

A careful review of the record indicates that the Claimant had worked for the Carrier for over 19 years and had served as a Water Service Repairman. The Carrier received certain information about alleged behavior by the Claimant on August 1, 1996. The Carrier then arranged for the Claimant to have a psychological evaluation on August 19, 1996. The evaluation did not reveal that the Claimant suffered from any mental illness.

The Carrier subsequently found that the Claimant had acted inappropriately during a conversation on August 1, 1996 with two representatives of an outside vendor. One of the two representatives casually knew the Claimant before the conversation. The record includes credible evidence from the two representatives about the comments that the Claimant had made about the employees of the Carrier. According to the representatives, the Claimant made certain statements concerning a drug rehabilitation program that the Claimant had taken and the Claimant then blamed the two employees of the Carrier for their treatment of the Claimant. The visitors to the Carrier credibly

specified that the Claimant had threatened to harm the two employees of the Carrier and to burn down their homes and shoot their families.

The Carrier had a right to consider the Claimant's comments to have violated the referenced Rules. Specifically, the Claimant's unjustified and most serious threats of physical harm certainly constituted misconduct within the meaning of Rule 1.6 and most definitely fell within the Scope of Rule 1.9, which prohibits violence in the workplace. The Carrier need not tolerate such misconduct because such action undermines the ability of employees to work in a safe and secure manner.

The record omits any credible evidence that the two representatives had any personal animosity toward the Claimant or had any reason to fabricate any aspect of the description of the behavior of the Claimant. The short passage of time that elapsed between the date of the incident and the date of the report of the incident by the two representatives to personnel of the Carrier merely reflects the unusual nature of the conversation and the hesitancy of the two representatives to report the comments of the Claimant to appropriate personnel of the Carrier. The passage of several weeks fails to negate the credible description by the representatives of the comments of the Claimant.

The record omits any persuasive evidence that the Carrier failed to provide the Claimant with adequate notice about the charges against him. The Claimant received sufficient notice of the nature of the allegations to prepare for the Hearing in the present matter. The Claimant also received several missing pages from the transcript of the Hearing in a timely manner as soon as the Carrier learned about the inadvertent error. The record omits sufficient evidence to find that the Carrier acted inappropriately by deciding not to have an individual present at the Hearing who the Carrier did not intend to call as a witness. The record further omits any persuasive evidence that the Hearing Officer on the property failed to conduct an appropriate Hearing. In addition, the record fails to prove that the representative of the Carrier who ultimately decided to terminate the Claimant lacked a sufficient basis to make the decision.

In reviewing the record, the evidence therefore substantiates that the Carrier conducted a fair and impartial Hearing in the present matter. In the context of the entire record and the special circumstances the Award shall provide for the denial of the claim.

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 16th day of February, 2001.