

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39334
Docket No. CL-39932
08-3-NRAB-00003-070095
(07-3-95)

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Transportation, Inc. (former Seaboard
(Coastline Railroad)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-13170) that:

1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, when, as a result of an unjust treatment investigation conducted on December 8, 2005, pursuant to Rule 40 of the Agreement, it failed and refused to reinstate Claimant T. L. Lucas to the service of the Carrier.
2. As a result, Carrier shall now reinstate Claimant Lucas to the service of the Carrier with seniority and all other rights unimpaired. In addition, he shall be compensated for all wages and benefit losses sustained (including Health and Insurance) and further, clear his personnel record of any reference to this arbitrary dismissal.”

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.

Our review of the record herein does not reveal any procedural irregularities that require determination by the Board. On the merits, we note that the instant dispute is a companion of the dispute decided in Third Division Award 39333. Both matters arose out of the same body of evidence. They differ in that they are premised upon different Rules of the Agreement. The instant dispute challenges the Carrier's determination that the Claimant was not unjustly treated in the termination of his seniority and employment with the Carrier.

The facts giving rise to the dispute are set forth in detail in Award 39333. Accordingly, we will not recount them here. That Award found that the burden of proof to establish a violation of the Agreement had not been satisfied by the Organization and the Claimant. Accordingly, that Award denied that claim.

Because the instant dispute is based on the same evidence as the dispute leading to Award 39333, we must concur with the Carrier's determination that the Claimant was not unjustly treated. Rule 41(e) of the Agreement was applied to him according to its clear and unambiguous terms. The Organization and the Claimant had the burden to prove otherwise and establish the existence of unjust treatment. On the record before the Board, that burden has not been satisfied. As a result, we have no proper basis for disturbing the Carrier's determination. Therefore, we must affirm the Carrier's decision and deny the instant claim.

AWARD

Claim denied.

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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 29th day of September 2008.