

The Second Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

Parties to Dispute: (System Federation No. 1, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Electrical Workers)
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current agreement, Electrician Michael A. Lopez was unjustly dismissed from the service effective October 23, 1975.
2. That accordingly, the Carrier be ordered to restore him to service with all seniority rights unimpaired and with pay for all time lost retroactive to the aforesaid date.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Following hearing and investigation, Electrician Michael A. Lopez was discharged from service of Carrier. The charge for which Claimant was found guilty was set forth in the Notice of Hearing, as follows:

"Conduct unbecoming an employee of the Penn Central Transportation Company; in that you had an altercation with a Penn Central Patrolman, W. Voccio, on Track 6, at approximately 5:30 AM, October 10, 1975, Sunnyside Yard, LIC, NY.

Menacing Penn Central Patrolman W. Voccio, resisting arrest and having in your possession a dangerous weapon (knife) at approximately 5:30 AM, October 10, 1975, Sunnyside Yard, LIC, N.Y. causing your arrest by Penn Central Patrolman."

The record evidence in this case consists solely of the testimony of Claimant and of the Patrolman he allegedly threatened. There was one other person present in the car when the incident took place, but he professes that he saw nothing, heard nothing and knows nothing. Examination of the testimony of the two witnesses shows that they are in conflict on nearly every significant point. Without doubt one of the two witnesses did not testify truthfully. Bearing upon credibility determinations are such factors as bias, self interest, demeanor and testimonial capacity. The hearing officer resolved the credibility question in favor of the Patrolman who testified that Claimant verbally abused and attacked him, pulling a knife. Claimant testified that the Patrolman harrassed, provoked and struck him, that he did not resist and that he did not have or use a knife. In addition to the witness in the car who saw, heard and knows nothing, one other witness established that there had been a slight confrontation between Claimant and the Patrolman prior to the alleged incident.

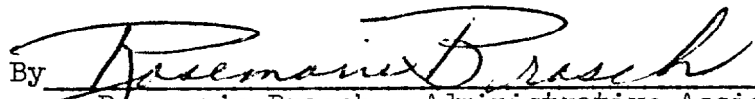
The only way for us to sustain the claim is to make a credibility determination by rejecting the Patrolman's version and accepting Claimants. On the state of the record before us the Hearing Officer could have easily done so, but his acceptance of the Patrolman's story is not per se arbitrary, unreasonable and capricious. Even if Carrier believed the wrong man where the issue is narrowed to credibility alone, we are unable to resolve such conflicts. Rightly or wrongly it is firmly established by a host of Awards that this appellate tribunal shall not resolve pure credibility questions. See Second Division Awards 6408, 6604, 7144 and 7196; See also Third Division Awards 14556, 19696 and 21258. We often are frustrated by this anomolous precedent, but the principle is established, it is understood and acknowledged by the parties and it is dispositive of the claim before us. We have no alternative but to deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of May, 1978.