Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7312
SECOND DIVISION Docket No. 7720
2-C&NW-EW-'79

The Second Division consisted of the regular members and in addition Referee Abraham Weiss when award was rendered.

Parties to Dispute: (System Federation No. 76, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
(Chicago and North Western Transportation Company

Dispute: Claim of Employes:

1. That under the current agreement the Carrier unjustly dismissed Electrician Helper Terry Steele from their service on August 12, 1977.

2. That, accordingly, the Carrier be ordered to reinstate Electrician Helper Terry Steele with all seniority rights unimpaired and all benefits due him and that he be compensated for all time lost from August 12, 1977.

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.

Claimant was dismissed, after investigation, for assaulting General Foreman Hester.

Insofar as can be determined from the record, the General Foreman observed Claimant away from his assignment talking to another employee (Mr. Buress) and proceeded to question him. Claimant took offense at the questioning, and at the Foreman's statement that he was going to be written up for being away from his assignment without permission. Hester then returned to the washroom adjacent to his office where he was shortly thereafter confronted by Claimant. At this point, the testimony of Claimant and the Foreman differ as to what took place.

Hester testified that Claimant came to the washroom, announced that they would settle their differences, and proceeded to hit him several times injuring his left eye. Hester asserts before the altercation started he attempted to leave the washroom, but was prevented from doing so by Claimant, who pushed him away from the door and then assaulted him. It was not until Claimant left the washroom that he left and got assistance.

Claimant, on the other hand, testified that Hester summoned him to his office; that Hester pushed him; that he was acting in self-defense when the two "grappled"; and that he did not hit Hester. Claimant also stated that his shirt was torn and his back scratched during the altercation. Carrier's Special Agent, called to escort Claimant off the property, stated at the hearing that he observed Claimant changing his clothes in the employee's wash room preparatory to leaving the property, but did not see any torn clothing or scratches, nor did Claimant mention any injury. The Shop Superintendent, who accompanied the Special Agent, affirmed the Special Agent's statements.

We are thus confronted with a conflict of testimony. Numerous awards of this Board have ruled that it is not the Board's function to review a Carrier's determination of the credibility of witnesses or to resolve conflicts in evidence unless it can be demonstrated that the evidence is insufficient or that the Carrier acted in a capricious manner. The transcript in this case contains substantial evidence in support of the charges against the Claimant. No arbitrary action on the part of Carrier is here shown.

The Organization, in its rebuttal, stresses that the Carrier did not call Mr. Buress as a witness--to testify as to whether the General Foreman did or did not ask Claimant to come to his office, as alleged by Claimant. However, neither Claimant nor the Organization requested Mr. Buress' presence at the investigation as a witness for Claimant. Furthermore, Claimant was ready to proceed with the investigation and did not proffer or offer to proffer additional evidence into the record at the end of the hearing.

The weight of the testimony supports Carrier's findings. We will not disturb Carrier's discipline. The claim will be denied.

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 10th day of January, 1979.