

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad Corporation

STATEMENT OF CLAIM:

1. That Coach Cleaner C. E. Huff was unjustly dealt with and suspended from the service of the Northeast Illinois Regional Commuter Railroad Corporation for a period of thirty (30) days of actual suspension, starting with January 15, 1987 through February 13, 1987.

2. That the Northeast Illinois Regional Commuter Railroad Corporation violated Rule 29(a) of the current Agreement dated October 1, 1986, as amended.

3. That the Northeast Illinois Regional Commuter Railroad Corporation be ordered to compensate Coach Cleaner C. E. Huff in the amount of eight (8) hours' pay, at the applicable rate, for each and every day of this unjust suspension.

4. That the Northeast Illinois Regional Commuter Railroad Corporation be ordered to pay Coach Cleaner C. E. Huff interest at the rate of 12 percent per annum for any and all compensation that he may receive as result of this claim.

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 employes 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.

The Claimant completed an uneventful days work shortly before 4:00 PM on December 15, 1986. At about 4:05 PM, as he was about to exit the gate from Carrier's fenced parking lot, he became engaged in an altercation with a former girl friend, a non-employee, whom he had stopped seeing some time earlier. A brief physical encounter developed, which was witnessed in various parts by several departing coworkers. Within ten minutes of the start of the incident Claimant reported the matter to Carrier's Police Department and sought to have the lady restrained from contacting him at work or on the property.

The next day Carrier's Police Department continued its investigation of the incident, mainly through interviews with those departing coworkers that witnessed portions of the encounter. With one exception the reports of these interviews suggest that Claimant's conduct was restrained for the most part. The exceptional report suggests that he was more actively engaged in the incident.

Three days later, on December 18, 1986, Claimant was charged with a violation of Rule N, reading:

"Employees must not enter into altercations,
play practical jokes, scuffle or wrestle, on
Company property."

Following the investigation Claimant was notified that he was being disciplined with a thirty-day suspension.

After examining the investigation transcript we are forced to conclude that inadequate evidence exists to support a finding that the Claimant was guilty of entering into an altercation on Company property. From our study of the record it is obvious that Claimant was on his way out the Company gate, after properly being released from duty, when a former lady friend forced the ensuing encounter. The incident lasted but a few seconds. It is obvious that the lady's basic purpose in waiting outside Carrier's gate, with another female friend, on a cold December day, was for the purpose of inflicting physical harm on Claimant's person, vandalizing his automobile and/or causing problems with his employer. The former girl friend is reported to have threatened to cause Claimant to be fired and at one time had bottles and cans poised to throw.

Claimant testified that he only engaged in physical contact with the woman in an effort to restrain her and defend himself. From our review of all of the eyewitness testimony this can be believed. Claimant's behavior does not suggest to us that he entered into an altercation. More appropriately it seems that he was forced into defending himself from the wrath and abuse of a rejected former girl friend.

On the totality of this record the disciplinary suspension cannot be upheld. The Claim will be sustained for wages lost during the suspension period, less deductions for outside earnings. Interest will not be allowed.

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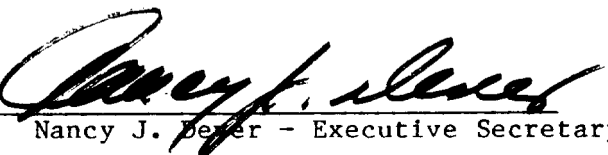
Award No. 11479
Docket No. 11500
88-2-87-2-168

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1988.