

The Third Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU  
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(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. That the Carrier violated the following rules, Rule 39 - Personal Injuries, Rule 34 - Discipline, and Rule 50 - Classification of Work, of our current agreement when they unjustly suspended Carman W. L. Munie for thirty (30) days following an investigation held on February 27, 1989.

2. That accordingly, CSX Transportation, Inc. be ordered to compensate Mr. Munie for all pay and benefits lost (made whole) as a result of said suspension and remove all reference to the charge from his record.

FINDINGS:

The Second 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 employees 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.

As a result of an Investigation conducted on February 21, 1989, the Claimant was notified that it had been found that he was at fault for conduct unbecoming an employee due to an altercation which had occurred on February 3, 1989. The discipline administered was a thirty day actual suspension.

After having reviewed the record, the Board finds that there is absolutely no dispute as to the facts giving rise to this matter. The only issue before the Board is whether or not the discipline assessed the Claimant was appropriate. The facts of the case indicate that a Clerk asked the Claimant to provide transportation for a train crew. The Claimant advised the Clerk that providing such service was not his job. Shortly thereafter, the Claimant heard the Clerk state over the radio that the Claimant was from Detroit and had a bad attitude. After hearing the statement, the Claimant


went to the Clerk's office in an agitated state. The Clerk responded by physically pushing, choking and removing the Claimant from the office. The Claimant responded by threatening the Clerk's life. The culpability of the Clerk is not an issue before this Board. In order for the Board to reverse the Hearing Officer's findings, it would first be necessary for this Board to find that the Claimant had "clean hands." In the instant case, that is not possible. As such, this Board will not substitute its judgment for that of the Hearing Officer. It is obvious that the Hearing Officer took into account the longevity of the Claimant with the Carrier and the fact that he has maintained a good record. Numerous Board decisions have upheld the dismissal of employees who have engaged in conduct similar to the Claimant's. Thus, the Board rejects the Organization's position that the Carrier was discriminatory, arbitrary and capricious in issuing the Claimant a thirty day actual suspension for conduct unbecoming an employee.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 2nd day of October 1991.