

The Second Division consisted of the regular members and in addition Referee Robert M. O'Brien when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Carrier violated the Agreement of September 1, 1949, as subsequently amended when on May 5, 1971, Car Repairer O. C. Francisco was given a formal investigation for charges that were not specific, resulting in an unreasonable and capricious assessment and a thirty-day (30) record suspension against his service record.
2. That the investigation was improperly arrived at and represents unjust treatment within the meaning of Rule No. 37 of the controlling agreement.
3. That because of such violation and capricious action, Carrier be ordered to remove such thirty-day (30) deferred suspension from the said Employee's service 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 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 waived right of appearance at hearing thereon.

This is a discipline case wherein claimant was charged with and, following a hearing, adjudged guilty of making an intimidating and provocative statement to a railroad official resulting in a 30 day record suspension being placed on claimant's service record. The Organization requests that the discipline be removed since Carrier has failed to prove by substantive evidence that claimant used intimidating and provocative statements to Trainmaster Little.

The testimony adduced at the hearing, though conflicting, was sufficient to uphold the charge against claimant. Mr. Little stated that on the claim date, claimant while holding a wrench in his hand, told him that the next time anyone put a light in his face he was going to hit him with a wrench. Trainmaster Parkam, though he was outside the shanty at the time, testified that he also heard claimant say this to Mr. Little. Claimant testified that he never told Mr. Little that he was going to hit him with a wrench. This was corroborated by witnesses Scott, Heafner, and Pope.

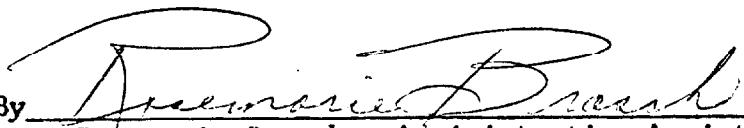
That it is not the function of this Board to weigh conflicting testimony in a discipline claim such as the one at hand is too firmly established to require citation of authority. Rather, we must review the testimony produced at the hearing and determine therefrom whether Carrier has sustained the burden of proving the charge by substantive evidence of probative value. We believe Carrier has sustained that burden. The statements by claimant to Mr. Little coupled with claimant's banging his wrench against the corner post in the shanty was sufficient to constitute such statements as being intimidating and provocative. Claimant never came forward with an explanation for banging the wrench while talking to Mr. Little, and we cannot say that Carrier's conclusion that this coupled with his statement directed toward Mr. Little was provocative and intimidating was arbitrary or capricious. The discipline assessed was not unreasonable and we will allow it to stand.

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 20th day of March, 1974.