Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7121
Docket No. 6824
2-N&W-CM-'76

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. 16 (formerly System
(Federation No. 23,) Railway Employes' Department
((Carmen)
(Norfolk and Western Railway Company
((formerly The Wheeling & Lake Erie Railway Company

Dispute: Claim of Employes:

1. That the Carrier violated the Current Working Agreement when they unjustly suspended Carman C. A. Biada for thirty (30) calender days, from August 17, 1973 to September 15, 1973, inclusively.

2. That the Carrier be ordered to compensate Carman C. A. Biada for the thirty (30) days' calender suspension, and make him whole for all benefits and priveleges he would have received during the suspension, and delete such discipline form his 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 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.

Mr. C. A. Biada, Claimant, is employed as Carman at Carrier's Cleveland, Ohio facility. Following an incident on August 17, 1973, Claimant was assessed a 30-day suspension for threatening and engaging in an altercation with another employee and also for transacting private business on Company time. Pursuant to Rule 13 (D) of the controlling Agreement the Organization on behalf of Claimant requested and received a hearing and investigation. Following the hearing the discipline was not reversed and by letter filed November 9, 1973, the instant claim was initiated.

We have reviewed the entire record, confining our deliberations to positions raised and argued on the property. Analysis of the evidence, especially the transcript of investigation, leaves no doubt that Claimant was selling electric grass trimmers to fellow employees during working hours on August 17, 1973. Claimant admits that he transacted one such sale to a clerk, C. E. Owens, Jr. and attempted to sell two remaining trimmers from the stock in his automobile to some signal department employees. But one of his grass shears was missing and following a search of the area and the yard office, Claimant found the shears in Owens' desk. The record becomes conflicting with regard to details of subsequent developments. It is clear however that Claimant became angry, engaged in a profane shouting match with Owens, and during the discussion a telephone flew through the air. Owens testified Claimant threw it at him and struck him, Claimant testified that he brushed the instrument with his arm and merely knocked it to the floor. The employees to whom the other two grass shears were to have been sold, claim they saw nothing except that the phone did move from its place on the desk. Claimant stated that one of these employees urged him to "nail him" (Owens) because "we knew he (Owens) was guilty." Claimant told Owens "I should throw you out the window" whereupon Owens departed and Claimant took back the trimmers he had sold to Owens as well as the other pair.

From the foregoing record we must conclude that there is substantial evidence to support the charges against Claimant. Absent direct attack, there is generally no excuse for engaging in an altercation with a fellow employee on time during which both are being paid by their employer to work. See Awards 2191, 4098 and 6481. Even assuming arguendo Claimant was correct in concluding the other had purloined his merchandise, we cannot condone his aggressive vigilante action. Nor can it go unremarked that but for his first proven offense, viz, transacting private business on company time, Claimant would not have become embroiled in the altercation which was his second offense. In all of the circumstances herein we cannot find that the imposition of a 30-day suspension was inappropriate, arbitrary or unreasonable. We shall deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Award No. 7123
Docket No. 6824
2-N&W-CM-'76

Attest: Executive Secretary
National Railroad djustment Board

By Rosemarie Brasch /ae
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th Day of August, 1976.