

The Second Division consisted of the regular members and in addition Referee Higdon C. Roberts, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 1, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Blacksmiths)
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

1. The records of this case clearly show that Blacksmith V. J. Consalvo was prejudged by his employer and removed from service on February 10, 1978 at 3:30 P.M. That no real effort was made by the Carrier to determine if Blacksmith Consalvo was in fact the initial aggressor in the alleged incident.
2. That these charges be stricken from Blacksmith Consalvo's record and suspension lifted; also that he be made whole for all loss wages incurred.

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.

The evidence is clear that the claimant was in an argument with a co-worker, during their tour of duty on the date in question. This Board, due to the conflicting testimony from the witnesses, cannot ascertain who was to blame. We do know, however, that proper supervisory action was taken to end the bickering. There was no physical violence involved at this time, nor was it highly unusual for this type of argument to happen in the shop. It could not be classified as a "feud", which is normally defined as a "Deadly quarrel between families".

There, again, is no question that a fight between the claimant and the same co-worker occurred in the parking lot following their shift. We have only the testimony of the participants as to who started the fight, and this testimony, as can be expected, is conflicting. We cannot, therefore, determine the aggressor.

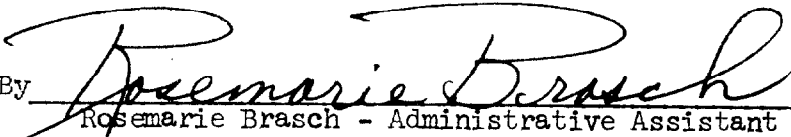
This Division, along with other Divisions of the National Railroad Adjustment Board have consistently found in similar circumstances, that such altercations are unquestionably conduct unbecoming an employee. In view of this we will not disturb the assessed discipline.

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 21st day of May, 1980.