

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the carrier violated the controlling agreement, specifically Rule 27, when they unjustly dismissed Carman Welder J. L. Lenhart from all service effective August 1, 1977 as a result of investigation held June 30, 1977.
2. That accordingly, the carrier be ordered to reinstate the claimant for all seniority rights unimpaired, all wages lost be paid and be made whole for all benefits accruing to an active employee.

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.

Claimant, James L. Lenhart entered the service of the Carrier on date of September 1, 1976, at Carrier's Program Car Shop Facility in Meadville, Pennsylvania, first as a Carman Helper and then as a Carman Welder, having been upgraded to the latter position on November 3, 1976.

On date of June 21, 1977, at approximately 10:00 PM, while working his regularly assigned welder position on second shift, Claimant, by his own admission and in view of several witnesses, physically assaulted a fellow employee, striking him at least three (3) times and knocking him to the ground. As a result of this incident, the Claimant was immediately removed from service pending the outcome of an investigative hearing which took place as scheduled on June 30, 1977. Based on the evidence adduced at the hearing, Claimant was adjudged guilty of violating Rule 106 of the Safety Rules for Maintenance of Equipment Employees of the former Erie-Lackawanna Railway Company and accordingly was dismissed from all service of the Carrier effective August 1, 1977. Rule 106 reads as follows:

"Employees who are dishonest, immoral, vicious, quarrelsome, uncivil in deportment, or who are careless of the safety or themselves or of others will not be retained in the service."

Claimant asserts he was ultimately driven to inflicting physical harm upon his fellow worker because of harrassment Claimant felt he had suffered from said employee over a period of about six (6) months. According to the Claimant, the the harrassment took the verbal form of innuendoes and insinuations, indirect statements in the presence of others, requests that he perform duties of another employee, and repeating the name, Sammy, when talking to or about him. Claimant also related he had been the object of several pranks, wherein on one occasion he had been resting in a shanty on luncheon break when someone had secured the shanty door shut, stuffed up the chimney causing the shanty to fill up with smoke; on another occasion, while welding at the end of a car on a bellmouth, sparks from his welding rod ignited gas coming from a train line hose, which gas was presumably placed in the hose by another worker on purpose; and in another instance, someone had placed rusty bolts in his lunch box thus spoiling his sandwich and other food items. Claimant testified he reported these incidents to supervision but contends supervision did not act on his complaints and did nothing to rectify the situation.

Carrier argues, Claimant at no time gave his supervisors the names of those individuals allegedly to blame for the harrassment and therefore its hands were tied insofar as taking any corrective action. Furthermore, Carrier notes, no evidence of a corroborative nature surfaced at the investigative hearing to support Claimant's allegations of harrassment.

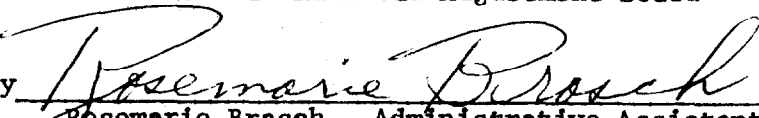
Upon close examination and a thorough review of the record, the Board finds the Claimant did, in fact, receive a fair and impartial hearing and that he was afforded his full rights of due process. The Board cannot find anything in the record of a mitigating nature to in any way modify, disturb, or negate the disciplinary action imposed upon the Claimant. Claimant's admitted behavior on June 21, 1977, was indeed menacing and presented a very real threat to the well-being of his fellow employees. The Board, under the prevailing circumstances, cannot and will never condone such behavior. We find that in view of the evidence before us, coupled with the Claimant's short term of employment, the discipline assessed was neither unreasonable or excessive, nor was such discipline arbitrary, capricious, or discriminatory. It is well settled that this Board will not substitute its judgment for that of the Carrier in discipline cases where, as here, there is substantial evidence to support the charge. Therefore, in the instant case, we find we must deny the claim.

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 January, 1981.