

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13395

Docket No. 13316

99-2-97-2-89

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(Sheet Metal Workers' International Association
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (former Chesapeake &
(Ohio Railway Company)

STATEMENT OF CLAIM:

- "1. CSX Transportation, Inc., (C&O RWay Co.) violated the provision of the current controlling agreement when it improperly disciplined Sheet Metal Worker K.E. Pierson when by letter dated January 8, 1997, he was informed that as the result of an investigation held on Thursday, December 19, 1996 at the Huntington Locomotive Shop 'You have been found guilty as charged. Discipline assessed will be thirty (30) actual working days suspension without pay including time subsequently withheld from service.'**
- 2. That, accordingly, CSX Transportation, Inc., be required to remove the discipline from Mr. Pierson's record and that he be made whole for any time, money benefits and seniority which he may have lost as a result of being found guilty."**

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 were given due notice of hearing thereon.

Effective December 6, 1996, the Claimant was advised of an Investigation to be held on December 19, 1996 to determine the facts and to place responsibility in connection with the charge of:

“... conduct unbecoming an employe in that you initiated an altercation including verbal abuse and threats of bodily harm to Sheet Metal Worker C. R. Vance in the main employe’s locker at approximately 3:00 P.M. on Thursday, December 5, 1996 at the Huntington Locomotive Shop.”

He was withheld from service pending results of the Investigation.

Following the Investigation, the Claimant was assessed a 30 working day suspension from service.

The Organization’s challenge to the Carrier’s imposition of discipline is two-fold; one procedural, the other lack of proof that the altercation was nothing more than locker room banter.

With regard to the procedural matter, the Organization requested an indefinite postponement because of the Claimant’s medical condition. The Carrier declined the postponement, on the basis the continuation was to an indefinite date, and upon advice of its Medical Department that the medical reason was not sufficient to sustain a postponement. After reviewing the transcript, it is clear to the Board that everything was normal, that the defense was the best it could be, and that the Claimant cooperated fully and candidly.

Regarding the Carrier’s obligation to establish substantial evidence of the Claimant’s responsibility for the charges assessed, the Carrier accomplished this through the testimony of other eye witnesses. Furthermore, the Claimant fully admitted responsibility for the charges. There is really no controversy to resolve, nor is the 30 working day suspension excessive for the established charges. The Carrier is forever

charged with providing a safe work place, and that includes safeguarding each employee's right to work without threat or fear of violence.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 12th day of April 1999.