

Award No. 10791
Docket No. CL-12939

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roy R. Ray, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(CHESAPEAKE DISTRICT)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood: (CL-5052):

(a) That the Railway Company erred in its decision to dismiss from the service Group 3 employee George Brunson on June 1, 1960, the result of a Board of Inquiry held jointly on employee Brunson and one other Group 3 employee on May 26, 1960, and

(b) That Lift Truck Operator George Brunson shall now be restored to service with the restoration of all seniority and other rights under the Agreement, and

(c) In addition, that George Brunson shall now be compensated for all resultant wage losses, loss of vacation rights, and any and all other rights due him from his initial employment with the Carrier.

OPINION OF BOARD: The Claimant Brunson was employed by the Carrier as a Lift Truck Operator working on the merchandise piers at Newport News, Virginia. About 4:15 P. M. on May 19, 1960, H. M. Douglas, working as a Tractor Operator on Pier 6, acting on instructions from his supervisor, approached Claimant for the purpose of exchanging lift trucks with Claimant. An exchange of words took place, following which Claimant struck Douglas on the head with a piece of iron pipe, knocking him down and rendering him temporarily unconscious. Douglas was hospitalized and stitches were required to close the wound.

Claimant and Douglas were charged by the Carrier with "fighting on duty on Company property". After due notice a hearing was held on May 26, 1960 at which both men were present and represented by the Local Chairman and the Organization. On the basis of the evidence presented the Carrier concluded that Claimant was at fault in striking Douglas and dismissed him from the service on June 1, 1960. No contention has been made that the hearing was unfair or conducted contrary to the Agreement. The Organization, asserting that the Claimant was not at fault, requested that he be restored to service. The claim was denied at all steps and was finally processed to this Division.

There were no other witnesses to the altercation and the statements of the Claimant and Douglas as to what transpired immediately prior to the time Claimant struck Douglas are in conflict. The Organization takes the position that Carrier chose to accept the wrong version of the incident, believing Douglas instead of Claimant.

This raises the question of weighing evidence and passing upon the credibility of the witnesses, a function reserved to the Hearing Officer who heard the testimony and observed the demeanor of the witnesses. In a long line of cases this Board has held that it will not substitute its judgment for that of the Hearing Officer upon the weight of the evidence. This principle was well expressed by Referee Carter in Award 3149 as follows: "We are committed to the rule that it is not a proper function of this Board to weigh the evidence and if the evidence is such, that if believed, it supports the findings of the Carrier, it will not be disturbed." Other excellent statements are found in Awards 2633 (Shake); 3127 (Youngdahl) and 5861 (Jasper).

Applying this principle to the present case a careful reading of the record satisfies the Board that there is sufficient evidence, if believed, to support the findings of the Carrier that the Claimant was at fault in striking Douglas with the iron pipe. In fact the hearing disclosed that Claimant understood that if there was anything unusual about Douglas taking the lift truck, Claimant should have taken the matter up with the proper authorities rather than resorting to the use of force.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1962.