



Award Number 17669

Docket Number MW-18299

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DELAWARE AND HUDSON RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

- (1) The suspension of Riveter Raymond J. Fontaine from April 25 to and including May 24, 1968 was without just and sufficient cause and on the basis of unproven charges. (System Case No. 24.68 MW).
- (2) Riveter Raymond J. Fontaine's record shall be cleared of the charges and he shall be compensated for wage loss suffered, all in accordance with the provisions of Rule 35(b).

OPINION OF BOARD: This is a discipline case. Claimant was assessed thirty calendar days discipline after a hearing to determine the responsibility of claimant for alleged insubordination, using vile and abusive language to his foreman and conduct unbecoming an employee in connection with his work habits.

It is well settled that the Board is without authority to substitute its judgment for that of the Carrier and that if there is substantial evidence in support of the Carrier's findings, this Board may not overturn such findings. It is further well established that absent a showing, in so far as the degree or amount of discipline is concerned, that the Carrier was arbitrary, capricious, or acting in bad faith in assessing such discipline that the Board is without authority to set aside, modify or change the discipline imposed. This position was recently restated by the Board in Award No. 16074 (Perelson) wherein we quoted Award No. 5032 as follows:

"Numerous prior awards of this Board set forth our function in discipline cases. We do not substitute our judgment for that of the Carrier nor do we decide the matter in accord with what we might or might not do had it been ours to determine. Our function is but to pass upon the question whether, without weighing it, there is some substantial evidence in the record to sustain a finding of guilty. Once that question is decided in the affirmative the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier. We are not warranted in disturbing the penalty imposed unless we can say that it clearly appears from the record that the action of the Carrier with respect thereto was so unjust, unreasonable or arbitrary as to so constitute an abuse of discretion."

Based upon the record before the Board, we find substantial evidence to support the Carrier's findings and that under the circumstances shown therein that the assessment of thirty calendar days was not arbitrary, capricious or unjust.

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 Employees involved in this dispute are respectively Carrier and Employees 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1970.