

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20159
Docket Number CL-20196

Irwin M. **Lieberman**, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, **Express** and
(Station **Employees**

PARTIES TO DISPUTE: (

(Kansas City Terminal Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7280) that:

(a) Carrier violated the Agreement when it suspended Claimant William L. **Mays** from service for a ten (10) day work period, February 14 thru February 27, 1972, on alleged charges of violation of company rules, which were not proven, and that the decision to suspend was unwarranted, unjust, arbitrary and prejudiced.

(b) **Carrier** further violated the Agreement when it **failed** to grant a conference as requested under provisions of Rule 25 of the Agreement.

(c) Carrier shall now be required to clear the record of the charges against Claimant **Mays** and compensate him for the ten (10) working days lost.

OPINION OF BOARD: The dispute in this matter involves the disciplining of an **employee** for alleged participation in an altercation during work.

Carrier first raises objections to Part (b) of the Claim in that this issue was not handled with Carrier's highest officer and therefore must be dismissed. The record supports Carrier's contention in this regard and Part (b) **will** be dismissed. (Awards 15449, 18445 and 19306).

It is well established that this Board cannot question a finding of guilt by Carrier if that finding is supported by substantial evidence. Carrier's position is essentially that Claimant was guilty in that he provoked the assault by his foreman. A study of the transcript of the Investigation does not support the finding of guilt; there is no substantial evidence to warrant a conclusion that Claimant violated the rules cited by Carrier. In fact the entire incident **may** not be properly characterized as an "altercation" - it was apparently so minor. The evidence indicates that an inadvertent blow was struck by the foreman - apparently without provocation. Claimant should not have been disciplined.

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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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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 violated.

A W A R D

Part (a) and (c) of the Claim are sustained; Part (b) is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third **Division**

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1974.