

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21105
Docket Number CL-20986

William M. Edgett, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and
Steamship Clerks, Freight Handlers,
Express and Station Employees
{ Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7693) that:

1. Carrier violated the Agreement between the parties when on February 11, 1974, they arbitrarily and capriciously assessed Clerk M. J. Sinwald thirty (30) days actual suspension.

2. Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion. The discipline was assessed without any proof whatever of the charges made.

3. Carrier shall now compensate M. J. Sinwald for each day held out of service, with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant was suspended for thirty (30) days after an investigation in which Carrier determined that he had been, as charged, guilty of taking part in an altercation. The Board in a very large number of cases has refused to support discipline which a Carrier has administered when its review of the transcript of the investigation has shown that Carrier acted without basing its decision upon substantial evidence in the record. The transcript of the investigation in this case shows that Carrier did not have substantial evidence upon which to base a finding that the Claimant had taken part in an altercation. Both Claimant and a fellow employee testified that the fellow employee was injured in an unfortunate accident. A third employee was present and testified that Claimant and the injured employee were engaged in a discussion of politics. Carrier based its finding that Claimant had assaulted his fellow employee largely on testimony by the person just referred to which indicated that after the occurrence the injured employee pointed to a paperweight and to the Claimant. From that testimony Carrier deduced that Claimant had thrown the paperweight, rather than having dropped it as both the Claimant and the injured employee testified. Carrier's inference may be a permissible inference, but it does not rise above inference, and certainly is not substantial evidence that Claimant threw the paperweight. Apparently Carrier recognized that fact and refrained from either charging, or finding, that Claimant had done that deed. However, in its written presentation to the Board Carrier has argued vigorously that Claimant did engage in that course of conduct. The record is devoid of other

conduct which would support the finding that Claimant had been engaged in an altercation, except for testimony which indicated that Claimant and the Injured employee had been asked to reduce the level of their conversation. Certainly, Carrier did not intend to discipline Claimant for loud talk, or it would have specified that offense in the notice of the investigation and in its findings following the investigation. What Carrier has done is to discipline Claimant for an offense that it suspects, but did not prove, that he committed. Under all of the circumstances the Board must sustain the claim.

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 violated.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.