

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **21226**  
Docket Number CL-21245

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7848) that:

(1) Carrier unjustly dismissed from the service Mrs. Helen **Wos**, Overcharge Claims Clerk, Detroit, Michigan, and Miss **Leona McMillian**, Clerk, Detroit, Michigan, as a result of investigation held on July 30, 1974, in which the transcript failed to support the decision of the Carrier in sustaining the **charges made** against the Claimants in the caption **of the** investigation.

(2) Carrier shall return **Mrs. Woe and Miss McMillian** to service with all rights unimpaired, and compensate them for **all** wages lost account dismissal.

OPINION OF BOARD: On July 24, 1974 Claimants engaged in a verbal **and** physical altercation which resulted in their immediate **suspension** pending an investigation for conduct unbecoming an employe (i.e. inciting a **fellow employe** to fight, physical fighting, failure to obey orders of Supervisors, causing a disruption in the office, and use or threatened use of a weapon in fighting).

Subsequent to the investigation both employee **were** discharged for inciting a fellow **employe** to fight and physical fighting. It was also **determined** that Claimant McMillian, used, or threatened to use. a **weapon**.

**Claimants** have urged, as a basis for relief, the fact that the officer who issued the decisions to terminate was not the Officer who heard the case. Under certain records, such a shoving might have a bearing on our review, however, we are of the view that said circumstance was not **prejudicial** to these Claimants.

Although we recognize a disparity **in** the testimony of the witnesses and Claimants, the record establishes the following basic sequence of events.

Claimant **Wos' comment** about Claimant **McMillian's** gum chewing triggered a verbal and physical dispute in the fourth floor ladies **room** (shouting, profanity, slapping, pushing, etc.). They continued the dispute in the hall at which point Claimant McMillian **was** physically restrained. Witnesses testify that they saw a weapon and heard McMillian shout "I'll kill you." and heard Ms. **Wos'** retort, "**No** you won't. Just try."

When ~~Was~~ was ordered to leave the area, she went to a Supervisor's office on ~~the~~ third floor and was **immediately** followed by **McMillian**. They ~~continued~~ **he** verbal altercation and again it appears that some physical contact, -- such as slapping and poking, -- ensued.

Even leaving aside the question of whether a weapon, as such, **was** introduced into the conflict, we are inclined to find that Carrier's action was warranted. It has been **long established** that this Board should not **sub-**stitute its **judgement** for the Carrier's in evaluating evidence if an appropriate basis for Carrier's conclusion is shown. Here there is substantial evidence to support the Carrier's version of the facts. In short, the criteria of Award 20993 has been met:

"**The** jurisdiction of this Board in discipline cases is well understood to be a threefold inquiry as to 1) Whether Claimant was afforded a fair and impartial **investigation** 2) Whether substantial record evidence supports the charge and 3) Whether the discipline imposed is, in all of ~~the~~ facts and circumstances of the case, **so** disproportionate to the offense **as** to be arbitrary, unreasonable or capricious. We have carefully reviewed the instant record in light of these standards."

We cannot state that the discipline imposed was disproportionate to the offense proved. In addition to showing the altercation, the record also shows that both Claimants were disinclined to allow the matter to drop. Our recent Award 21068 fs, we feel, quite pertinent to this record:

"In every instance such as the one here under review, it is safe to say that one of the parties ignited the spark. But, it is equally safe to state that both parties had ample opportunity to restore a sense of propriety to the matter before it **became totally** uncontrollable;"

Based on all the evidence presented we can not state that the **disciplinary** action imposed was either arbitrary or capricious.

**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

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That the Agreement was not violated.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **August** 1976.