

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22209  
Docket Number MW-22263

Nathan Lipson, Referee

(Brotherhood of Maintenance of Way **Employes**  
**PARTIES TO DISPUTE:** (  
(Consolidated Pail Corporation

**STATEMENT OF CLAM:** "Claim of the System **Committee** of the Brotherhood  
that:

(1) The dismissal of Mr. George Squires, an Engineer-Work Equipment, was without just and sufficient cause and wholly disproportionate to the offense with which charged (System Docket 315 Central Region-Pittsburgh Division Case **MW 7/77**).

(2) Claimant George Squires shall be restored to service with seniority, vacation and all other rights unimpaired and he shall be paid for all monetary losses suffered as a consequence of the aforesaid dismissal."

**OPINION OF BOARD:** This is a case involving the discipline administered to an Engineer-Work Equipment, based on a charge of violation of Carrier Rule E, when he struck a fellow **employee** on the head with a pick handle.

A trial was held on November 19, 1976, and Claimant was present and duly represented. Several witnesses testified to the incident in question, and their testimony was essentially corroborated by that of the Claimant wherein he states:

" . . . so I turned around and hit him. I swung again. I did not hit him the second time, then I threw the pick **down** and I was looking at him and I was scared and ran off the job . . . ."

Testimony of Witness **Ancrile:**

" . . . I was right next to him, about a foot and **one-** half behind him and Mr. Squires came up saying out loud, '**Try** and take it off of me,' and proceeded to hit him in the head. After the first swing, he swung again. I tried to stop him and blocked it and it hit him in the shoulder the second time . . . ."

Testimony of Witness **Elizeus** (victim):

- "Q. Mr. **Elizeus**, you are a **trackman** in District **Gang #6**.  
Would you please tell us what happened on September 23,  
1976 at approximately **7:30** A.M.?
- A. Well, the foreman, Jim Jones, told me to put the tools  
into the bus, so I put the tools in the bus and Mr. Squires  
had a pick handle, and I asked **him** for it, and he said,  
'Wait I'll give it to you', so then he did **not** give it to  
**me** and I turned **my** back to **him** and started to walk towards  
the door of the **bus** and then I got hit with the pick  
**handle** and I was out **and** I do not **remember what** happened  
after that. "

The testimony was cowincing that Claimant was guilty of  
reprehensible conduct which cannot be tolerated in the railroad society.  
Under the circumstances, there is no basis for this Board to interfere  
in the discipline assessed and the claim will be denied.

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

The Agreement was not violated.

A W A R D

**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 October **1978**.