

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **22461**
Docket Number MU-22640

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**
(The Chesapeake and Ohio Railway **Company**
(Southern Region)

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

(1) The dismissal of **Trackman** Earl J. **Downey** was without just or sufficient cause and extremely **disproportionate** to the offense with which charged **/System File C(So)-D-467/MG-1893/**.

(2) **Trackman Downey** shall be restored to service, paid for all time lost, including any incidental overtime, vacation, insurance or any other rights to which he would have been entitled had he not been taken **from service.**"

OPINION OF BOARD: On June 2, 1977, claimant was notified that he was dismissed from Carrier's service because of his physical attack on another **employee**, an Equipment Operator, on **May** 9, 1977, on the Company parking lot at Clifton Forge, Va. **His** dismissal followed an investigation conducted on May 24, 1977.

A careful review of the record shows that claimant was afforded a fair and impartial hearing prior to his dismissal. Without going into all the details leading to the altercation on May 9, 1977, suffice it to say that there was substantial evidence produced at the hearing to show that claimant was guilty of the offense for which he was dismissed. His actions justified severe discipline. There is, however, **some** evidence of provocation on the part of the Equipment Operator;

Claimant had been in Carrier's service since 1971, and, so far as the record shows, his record was free of any prior disciplinary action.

Based on the entire record, the Board is of the opinion that the time that claimant has been out of service should constitute

sufficient discipline. We will award that he be restored to service with seniority and other rights unimpaired, but without pay for time lost while out of service. Claimant should clearly understand, however, that the purpose of this award is to give him "one last chance" to become and remain a responsible employe, and that further major infractions by him will result in the permanent termination of his services.

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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1979.

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