

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRDDIVISION

Award **Number** 22974
Docket **Number** MS-23106

A. **Robert** Lowry, Referee

PARTIES TO DISPUTE: (D. A. Wade
(Illinois **Central** Gulf Railroad

STATEMENT OF CLAM: 'This is to serve notice, as required by the rules of the **National Railroad Adjustment Board**, of Mr. D. A. Wade's intention to file an **ex parte** submission on September 19, 1979 covering an **unadjusted dispute between Mr. D. A. Wade and the Illinois Central Gulf Railroad** involving the question of Mr. Wade's dismissal from the **service** of the **Illinois Central Gulf Railroad Company** due to his **involvement in altercation** with another employee on company property which occurred **on** July 20, 1978, at or near Jessup, **Kentucky.**"

OPINION OF BOARD: On July 26, 1978, the Carrier addressed the **following** letter to Mr. D. A. Wade, employed as a **Bridgeman**, the claimant, and to **Mr. H. L. Adams, System Bridge Foreman**, both employed in System Bridge Gang **No. 3**, reading **as** follows:

"Arrange to **attend a** formal investigation to be held at the Division **Engineer's** office at Paducah, **Kentucky on** Friday, August 4, 1978 at **9:00 A.M.** for the purpose of determining the facts **and your** responsibility, **if** any, **in** connection with **the** conflict that occurred at approximately **5:15 P.M.**, Thursday, July 20, 1978 at or near Jessup, Kentucky.

"**You** way bring representatiws **and** witnesses **in** your behalf, as prescribed in your Schedule Agreement,"

At the request of the General Chairman of the **Organization** the investigation was rescheduled for August 8, 1978, at which **time the formal investigation** was held. **Claimant** was held out of service **commencing** July 21, 1978 and **formally** dismissed from the service of the Carrier **following** the investigation.

This conflict started early in the work day of July 26, 1978, when **claimant** wee admonished by his foreman for not performing an **assigned** work function in accordance with the **usually** acceptable procedures.

Claimant angrily objected to the criticism and in the course of the argument threatened the foreman by saying: 'We gonna get rid of you one way or another.' The record clearly shows claimant's reluctance to accept supervision, without which the effectiveness of an isolated gang such as this one would be greatly affected. About 5:15 P.M. after the foreman had dismissed the gang and was alone in his office, a converted camp car, the claimant entered the office and beat him with his fists about the head. System Bridgeman H. J. Adams came upon the scene shortly thereafter and stopped the beating. He found the foreman on his knees and bleeding about the face and the claimant was standing over him posed to strike again. While claimant stopped the beating he again threatened the foreman, in the presence of Bridgeman Adams, by saying, "I'm not through with you yet." The record shows the beating took place while claimant was off duty but on company property.

Assault charges were filed against the claimant who was arrested the following day and held in jail until bond was posted. The record shows claimant pleaded guilty to the charges and was fined \$100.00. The claimant filed charges against the foreman for harassment but the charges were never acted upon,

Claimant contends in the brief filed with this Board by his legal counsel that he was not given the right to provide witnesses to support his case. A careful examination of the record shows claimant was notified of his right and was invited to bring witnesses to the investigation as well as his representative as prescribed in the Schedule Agreement. The transcript of the investigation shows the only instances where the claimant or his representative, the General Chairman of his Organization, requested a recess to obtain witnesses was to challenge evidence as to the amount of water that had been spilled or not spilled from the water keg and to verify that an argument had occurred over the water keg between the foreman and the claimant. The Board feels that irrespective of what evidence might or might not have been developed by additional witnesses to determine the amount of water remaining in the water keg or the nature and extent of the exchange of words about this issue that took place between the two parties, it would not have justified the action taken by claimant when he beat up the foreman later that day. The Board finds that none of claimant's substantive procedural rights was violated and he and his representative were given every opportunity to examine and cross examine all witnesses.

The Board **finds** that the record **contains** sufficient probative, credible **and** competent evidence to support **Carrier's** action. **In** the case of a serious offense such as involved here where **claimant** was clearly insubordinate, and **as** a result of constructive criticism, he beat up the foreman, this Board, following a long history, will **not** set aside the measure of **discipline rendered** by the Carrier in an attempt to protect its **employees and** assure that such altercations do not reoccur. **The** Carrier's action **in imposing** the discipline was justified **and with sufficient** cause. The action was not arbitrary, **capricious** or in bad faith, There is **no** proper basis for **the** Board to **interfere with the discipline** imposed.

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 **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 **Agreement was not violated**.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, **Illinois**, this 12th day of September 1980.