

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23091
Docket Number a-22584

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(
(Chicago, Milwaukee, St. Paul and Pacific **Railroad Company**

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood
(GL-8580) that:

1) Carrier violated the Clerks' **Rules** Agreement at Milwaukee, Wisconsin on February 16, **1977** when it failed to conduct a fair, impartial and complete investigation into charges filed against employees **W. P. Ciesinski, D. Mazurczak and D. H. Dawe.**

2) Carrier further violated the **Clerks'** Rules Agreement on February 26, **1977** when, in abuse of its discretion it assessed discipline of a **90-day** deferred suspension with one (1) year probation against the employees named **above** without first presenting convincing evidence **to** prove their responsibilities or guilt.

3) Carrier shall be required to erase the discipline imposed **and** the records of all three employees named above shall **be** cleared of the alleged charges.

OPINION OF BOARD: The three **Claimants** involved in the instant dispute were employed as Store - helpers in **Carrier's Material Department** at Milwaukee, Wisconsin. On February 11, **1977** each Claimant received the **following** letter:

"A formal investigation will be held on Wednesday, February 16, 1977 at **9:00** a.m. in the office of the Manager of Materials for the **purpose** of developing the **facts** and **circumstances** in connection with the **following.** You are hereby instructed to be present **at the time,** date and place as mentioned herein.

1. For alleged violations of the **CMStP&P** safety Rules namely General Notice, General Rule A and **specifically** Rules 109 **and** 114 on or about 10:00 a.m. on February 1, **1977.**

'2, For allegedly participating in the burning of a volatile, **flammable liquid** on or about 10:00 a.m. on February 1, **1977** in the men's toilet room on the north end of SD-43.

3. For alleged failure to report a fire in the men's toilet room on the north end of SD-43 on or about 10:00 a.m. on February 1, **1977**.

4. For allegedly destroying company material on or about 10:00 a.m. on February **1, 1977**.

5. For allegedly using company material without proper authorization on or about 10:00 a.m. on February 1, **1977**.

You may be represented by one or more duly accredited representatives."

Claim was filed on behalf of Claimants by the Organization on May 20, **1977**.

The **Organization maintains that** Carrier has not met its **burden of proof** in establishing presence of Claimants at the site of the arson incident at the alleged time of its occurrence. As support for this argument, the **Organization** points to the congruence of **Claimants' testimony** as to location and activity during the alleged incident, contrasted with the lack of **such** complete uniformity of Carrier witnesses testimony regarding the exact **time** sequence. We are not persuaded that absolute homogeneity of testimony is an unerring indicator of veracity. Indeed, there is evidence in the transcript that Claimants assembled on at least one occasion prior to testifying "**trying** to figure out exactly where we were at exactly what time"

Based upon a careful reading of **the** ponderous and convoluted **transcript** before us we find that Carrier has **indeed carried** its burden. Conflicts with respect to time among **Carrier** witnesses' testimony are not so **severe** as to discredit any **single** witness. Moreover, upon being questioned **separately**, **Claimants** failed sufficiently to refute **the** six Carrier witnesses. **One** alibi witness for Claimants was caught in blatant fabrication of facts **in** an attempt to corroborate Claimants' story. We find from the record that Carrier did not err in resolving the credibility conflict against Claimants.

Accordingly, we find that Carrier has met its burden of proof based on a preponderance of the evidence before us. We, therefore, **find** no reason to disturb Carrier's assessment of discipline.

The Claim is 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 sre 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:


Executive Secretary

Dated at **Chicago, Illinois**, this 15th day of December 1980.