

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23407
Docket Number CL-23372

Paul C. Carter, Referee

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

PARTIES TO DISPUTE:

The Pittsburgh and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9003) that:

(a) The Carrier violated the Rules Agreement, effective September 1, 1946, particularly Rule 20, when it assessed discipline of dismissal on Lead Foreman-Clerk H. E. Coley, Pittsburgh, Pennsylvania.

(b) Claimant Coley's record be cleared of the charges brought against him on January 4, 1979.

(c) Claimant Coley be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Rule 20. Claimant also to be made whole for any money he was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Travelers Group Policy GA-23000.

OPINION OF BOARD: In the Statement of Claim claimant is referred to as H. E. Coley. In the investigation he gave his name as Herman L. Coley and his service record shows his name as Herman Lee Coley.

On January 4, 1979, claimant was assigned as Lead Foreman-clerk, in Carrier's Custodial Department, headquartered in Room 65 of Carrier's Terminal Annex Building at Pittsburgh, Pa. The official in charge of Carrier's custodial and mail operations, and the claimant's immediate superior was G. J. Churchill, Supervisor of Custodial and Mail Service, also headquartered in Room 65 of the Terminal Annex Building.

About 8:30 A.M., on January 4, 1979, an altercation ensued between claimant and Supervisor Churchill. Mr. Churchill placed a call for assistance to the Main Transportation Department office, located approximately 100 yards distance from the Terminal Annex Building. Administrative Assistant S. Greenfield and Assistant to Chief of Police C. W. Voorhees responded immediately. Upon entering the office occupied only by Messrs. Coley and Churchill, Greenfield was advised by Mr. Churchill that the claimant had kicked him on the left leg and struck him on top of the head. At that time Mr. Greenfield removed claimant from the service and instructed him to leave the property immediately. Mr. Churchill was instructed to get medical attention at Carrier's medical office.

The **Carrier's** Chief Medical Officer's examination of **Mr.** Churchill indicated a tenderness on top of the scalp **and** a swelling above the left knee laterally, as well. as Indication of a previous **injury** consisting of dry abrasions, anterior aspect, **left** lower leg. Medication was prescribed **and** Mr. Churchill was **referred** to the hospital for x-ray of skull and **left** leg, following which he returned to work.

On January **5, 1970**, Carrier's **General** Superintendent - Transportation, advised claimant by certified mail:

"Arrange to **attend** a **formal** Investigation at **10:00 A.M.**, Thursday, January 11, **1979**, in **Room 108** of the **P&LE Terminal Building**, Pittsburgh; pa., to develop the facts and **determine** your **responsibility**, if any, for your alleged violation of **Rules (T)B01, (T)C, D and (T)D-1**, of the Pittsburgh and Lake Erie Railroad **Company** General Rules, which occurred **approximately 8:45 A.M.**, Thursday, January 4, **1979**, in **Room 65** of the **P&LE Annex Building**, Pittsburgh, pa., while working as **Lead Foreman-Clerk**, Job 001 at Pittsburgh."

The investigation was postponed by agreement and held on January 17, **1979**. The claimant was present and represented by the Vice General **Chairman and Division** Chairman of the Organization.

Carrier's General Rules referred to in the letter of charge read:

"**(T)B.** Loyalty to the Company is a condition of employment. Acts of disloyalty, hostility or willful disregard of the **Company's** interest are prohibited. Such acts include, but are not limited to, the following.

"**1.** Insubordination

"**(T)C.** To enter or remain in **the** service, employees must be of good moral character and must conduct themselves at all times, whether on or off **Company** property, **in** such **manner** as not to bring discredit upon the Company."

"**D.** **Employes** must **devote** themselves exclusively to **Company's** service while on duty."

"**(T)D-1.** Gambling, wagering, fighting, or **participating** in any illegal, immoral or **unauthorized** activity, while on duty or on **Company** property, is prohibited."

In the investigation **claimant's representatives** objected that the charge was not precise,. In the first place, **Rule 20-Discipline**, of the applicable Agreement does not provide for a "precise" charge, **only** referring **to** charge. In the second **place**, the charge was sufficiently precise to **enable** the **claimant** and his representatives to prepare a defense, advising the rules Involved and the time, **place** and date of the alleged violation.

Following the **investigation**, claimant was dismissed from service on January 24, 1979.

The altercation on the morning of January 4, 1979, was not witnessed by anyone other than the two participants. The testimony of the two men was in direct **conflict** as to how the altercation **began**, who was the **aggressor** and just what transpired. The **Carrier** chose to believe the testimony of **Supervisor** Churchill. The **Supervisor's** testimony was corroborated, to an extent at least, by the report of the doctor covering **his** examination of the **supervisor**, which report **has** been made a part of the record. It is well settled that this Board will not weigh evidence, **attempt to** resolve conflicts therein, or to pass upon the **credibility** of witnesses. Those functions are reserved to the hearing officer. As stated In recent **Award No. 21278**:

"There is a conflict **in** the testimony here **and the** carrier chose to believe the version advanced by **Mr.** Smith rather than the claimant. We cannot say **this** was **wrong**. **This** Board functions as a reviewing authority and **it** cannot substitute its version of the facts for that reached by the **trier** of facts who heard the **testimony**, observed the demeanor of the **witnesses** and, by Its proximity, was entitled to weigh and evaluate the **credibility** of witnesses. So long as the conclusions reached are based upon substantial evidence in the record they should not be overturned..."

Based upon the record, there is no proper basis for the Board to interfere with the discipline **imposed** by the **Carrier**.

FINDINGS: The **Third** Division of the **Adjustment** Board, after giving the **parties** to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the **Carrier** and the **Employee** involved in this dispute are respectively Carrier and **Employee within** the meaning of the Railway Labor Act, as approved **June 21, 1934**;

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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**

A. W. Paulsen
ATTEST: _____
Executive Secretary

Dated at Chicago, **Illinois**, this **3rd** day of November **1981**.

