

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **24368**  
Docket Number **MW-24358**

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way **Employees**  
(Burlington Northern Railroad Company (former St. Louis-  
( San Francisco Railway Company)

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

(1) **The** dismissal of Machine **Operator** C. Bell for 'alleged violation of General Rule G, Rules 175, 176, and **184** of the Rules for the Maintenance of Way and Structures in that you allegedly entered **into** a boisterous altercation with Randy **Hayter**' was on the basis of **unproven** charges (System File B-1977).

(2) Machine Operator **C.** Bell shall now be allowed the benefits prescribed in Agreement Rule **91(b)(6).**"

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier, prior to a formal investigation on the **charges with violation of** Rules G-175, 176 and **184** of the Carrier. The formal investigation was scheduled for August **12, 1980** at the request of the General Chairman. Claimant did not attend, but did receive proper notice.

The Organization contends that the charges **were** unproven at the hearing and that the Carrier is **bound** by the evidence as adduced at the investigation. The only evidence presented at the hearing **as** reflected on the transcript was the reading of the certified letter sent to the Claimant, the notation that he was not present, the inquiry of the General **Chairman** as to whether he was representing the Claimant, and the request of the **Vice General Chairman** of the possibility that the hearing be **postponed**.

Claimant had been **summarily** dismissed on July **18, 1980** following an incident involving the Claimant wielding a **knife** threatening his **foreman** and another employee, hitting another employee and throwing several rail anchors at the employee.

On November **18, 1980**, the Carrier offered to **re-open** the investigation upon a previous request of the Organization. The Organization declined on December **9, 1980**, responding that they felt the initial investigation, "**... was sufficient**".

The Carrier contends that the Organization is estopped from raising a claim based upon insufficiency of the record because the Organization itself stated that the **record** was sufficient.

We concur with the position of the Carrier. **The** facts of this case indicate that the hearing officer and the union representatives had driven over 400 miles to be present at the hearing at which the Claimant failed to appear. The **Claimant** failed to notify even his representative. The record indicates that the Vice General **Chairman** only sought the "possibility" of a re-opening of the hearing. We find that the subsequent acceptance of the offer by the Carrier to re-open the hearing estops the Organization **from** raising the issue at this level.

We further conclude that the measure of discipline in this matter fits the Rule **violations**. Assault and battery **upon** fellow **employees** and supervisors cannot be tolerated in this, or any, industry. As Second **Division** Award 1659 states:

"**Discipline** is necessary to obtain efficient and orderly conduct of railroad operations. It is necessary also to protect fellow employees and **supervisory** officers from physical violence by those who are disposed to settle their difficulties by such **means**." (Railway Express **v. IAM**, Referee Carter)

**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 Agreement was not violated.

**A W A R D**

Claim denied.



**NATIONAL RAILROAD ADJUSTMENT BOARD**

By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By *Rosemarie Brasch*  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day Of May 1983.