

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24620  
Docket Number SG-25140

**Tedford E. Schoonover**, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railroad Signalmen  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation:

System Docket 1647

Appeal dismissal of T. H. Seitz.

OPINION OF BOARD: Carrier notified Claimant under date of July 3, 1981 to attend trial on the following charge:

'Alleged violation of Rule **'E'** of the General Rules in which you allegedly assaulted Mr. Darling, Signal Foreman, on **July 1, 1981**, at approximately **9:20 a.m.**'

Rule **"E"** which Claimant allegedly violated is quoted in part as:

**"E.** Gambling, fighting or participating in any illegal immoral **or** unauthorized activity while on duty or on Company property is prohibited.\*

**The** trial was held on July 14, 1981 and Claimant was notified of his dismissal on July 21, 1981.

The Brotherhood position is that this is a case of conflict of testimony between the Claimant, a signalman, and his foreman, Marvin O. Darling; and that Carrier failed to meet its obligation to provide the burden of proof in showing **Claimant** guilty of violation of the rule as charged.

A careful review has been made of the transcript and supporting documentation. Matched against Claimant's unsupported denial of **assaulting** his **forman** we have the foreman's testimony that Claimant back handed him without warning causing a contusion on his lip for which he was taken to the hospital for treatment. His visit at the hospital was supported by the hospital report. He was given a tetanus shot while there and told to take care of his lip. Moreover, Claimant was taken out of service immediately after the alleged assault occurred on authority of **M. A. Brown**, Acting Engineer.

It is important to note Claimant admitted during the hearing there had been a confrontation between himself and Mr. Darling and that it could be construed that he threatened his foreman with physical harm. The incident which caused the confrontation arose out of the foreman's request of Claimant to step outside the cab of a vehicle which was used in their work for his smoke break. Apparently this angered Claimant to the point he followed the foreman into the lunch room where the assault occurred. The foreman testified he did not threaten Claimant **nor** take any retaliatory action against him after he had been hit. It should also be noted the foreman agreed to take a polygraph test on his testimony.

The Board is much more impressed with the factual evidence reviewed above than the bare and unsupported denial by Claimant.

The transcript includes a considerable amount of questioning by Claimant and his representative bearing upon work conditions in the area. It is clearly understandable why the Hearing Officer endeavored to shut off such dialog and get the hearing back to the subject at hand, i.e., the alleged assault charge. His efforts in this regard were questioned by the Brotherhood representative -- improperly it appears since such dialog was irrelevant to the charge. The plain fact is that the evidence is clear and convincing that Claimant did indeed assault his foreman in violation of Rule "E", as cited by the Carrier.

The Board has determined in many cases involving conflict in testimony and the determination of Referee Coffey in First **Division Award** 14690 would appear to most nearly fit the circumstances here:

"We have here a record of a positive statement and an emphatic denial. As the trier of the facts, we might have believed the claimant instead of the conductor, but on the record before us there exists no basis for holding the carrier abused its discretion when it elected to believe the conductor and not the claimant."

During the hearing Carrier introduced a record of prior disciplinary action against Claimant. There is no evidence that this record was in any way used in determining Claimant's guilt of violating Rule "E". On the contrary, the facts as to the assault are conclusive standing alone.

**Physical** assault by an **employee** against his supervisor is a most serious offense; an intolerable act which no employer should be asked to tolerate. Action by the Carrier in dismissing Claimant from service was based on substantial credible evidence and must be deemed for just and reasonable cause.

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

That this Division of the Adjustment **Baord** 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:

  
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Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.