

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24640
Docket Number MW-24907

Paul C. Carter, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Consolidated Rail Corporation

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

(1) The dismissal of Track Foreman Michael Sanchez for alleged violation of "Rule #3007" and "Rule E" was without just end sufficient cause.

(2) The claimant shall be reinstated with seniority end all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Prior to the occurrence giving rise to the claim herein, Claimant was employed as a section foreman, who was found guilty of the following offense and was dismissed from the Carrier's service on June 3, 1977:

"Violation of Safety Rule #3007 which states:

'Personal conduct must be free from scuffling, practical jokes or horseplay while on duty or on company property.'

Also, violation of Rule E which states in part:

'Gambling, making bets, fighting or participating in any illegal immoral or unauthorized activity while on duty or on company property is prohibited.'"

A transcript of the hearing held prior to Claimant's dismissal has been made a part of the record. The record shows that Claimant engaged in a fight with another **employee** on Company property, as a result of which both sustained injuries.

The record does not show that there were witnesses to the fight, other than the two participants. Each of the participants testified in the investigation and gave conflicting statements as to who instigated the fight and who was the aggressor. The Carrier, as the trier of the facts, chose to believe the testimony of the other **employee** rather than that of the Claimant.

It is well settled that this Board will not weigh evidence, **attempt to** resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer. The Board may not reverse **the** Carrier's determination merely because of conflicts in testimony. The evidence in the present case was sufficient to warrant Carrier's action in imposing the discipline that it did.

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 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:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984

