

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24675
Docket Number HW-24750

Ida Klaus, Referee

PARTIES TO DISPUTE: (**Brotherhood** of Maintenance of Way **Employes**
(Consolidated Rail Corporation (former
(Penn Central Transportation Company)

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

- (1) The Carrier, **without** just and sufficient cause and on the basis of unproven charges, improperly disciplined **Trackman** D. W. **Kepler** on charges that
 - (a) he allegedly refused to perform duties as instructed by Foreman E. **J. Galitskie** and leaving the **Carrier's** property without proper permission on September 19, 1979 (System **Docket** 538);
 - (b) he allegedly verbally abused and threatened Assistant Engineer **J. V. Gidaro** at **Waterville**, Pennsylvania on September 19, 1979 (System **Docket** 539).
- (2) The above charges be stricken from **Trackman** D. W. **Kepler's** record and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: **Two** claims (**a** and **b**), made by the same claimant and combined in this submission, are before us for decision. The claims concern separate respective charges arising out of unrelated incidents occurring on different parts of the same day. Separate "**trials**" on each charge were held on the property at different times, **and separate** discipline was assessed. This Board has considered **each** claim in **similar** fashion. The Organization asserts that the Carrier has failed to **prove** its case as to each charge. It asks for reversal of the discipline imposed and for other remedial measures.

Claim (**a**) protests a **37-day** suspension without pay. It concerns a charge of insubordination for failure to perform assigned scrap clearing duties and for leaving the Carrier's property without permission. The Claimant has maintained that he disobeyed no orders or instructions to perform assigned work. **Moreover**, he **asserted** he left the track for safety reasons and did not know that he had moved beyond the boundaries of the Carrier's property.

Claim (**b**) protests a loss of pay for 36 days. It concerns a charge of verbal abuse and **threats** against an Assistant Engineer at the work site. The claimant has denied the charge, asserting that he approached the supervisor in amicable fashion simply to ask advice about heating a frozen wheel bearing.

The record evidence is plainly conflicting. In each instance witnesses for the carrier gave testimony in support of the charges, while those called by the claimant sought to sustain his defense. The Carrier evaluated the testimony of both sides. It did not believe the Claimant's assertions, accepting as true the contrary statements of supervisors and others who were at the work site at the particular time. The **Board** may not overturn that credibility resolution.

Upon consideration of the record as a whole, the Board finds ample support for the merits of each charge and reasonable justification for the particular discipline imposed. In other words, the Carrier has shown just cause for the penalty assessed in each instance.

The claims must therefore be 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 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984

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