

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24689
Docket Number MW-24871

Eckehard Muessig, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(**The** National Railroad Passenger Corporation (Amtrak) -
(**Northeast** Corridor

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

(1) The thirty (30) days of suspension imposed upon **Trackman** L. Minella for alleged **"Violation"** of Amtrak Rules of Conduct 'I' and 'J' was arbitrary and on the basis of unproven charges (System Locket **253D**).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: This dispute resulted from an incident which occurred on Friday, July 17, 1981. On that date, Carrier contends that the Claimant, a **Trackman**, willfully spat upon a Project Engineer in order to provoke a fight. Following an investigative trial, the Claimant was suspended from the Carrier's service for thirty (**30**) days.

The Claimant holds that the Carrier did not meet its burden of proof in this case, contending that it relied upon the uncorroborated testimony of one witness. He further contends that he did not **receive** a fair and impartial hearing, because the trial officer did not **"use"** sound discretion in seeing that the **rights** of the employee are fully protected..

The Board has carefully reviewed the investigative transcript to insure that the Claimant was provided a fair and impartial hearing. We do not find that the **Carrier** acted in an arbitrary or capricious manner in the proceedings leading to the suspension.

With respect to the merits of the issues and the conflict of testimony at the hearing, we find no basis to disturb a long body of Awards by this Division which have established that it is not the Board's role to pass on credibility of witnesses or resolve conflicts in testimony. These functions are reserved to the Carrier.

In arriving at its penalty, the Carrier considered the incident at hand and the **Claimant's** past disciplinary record. On the record before us we find that the Carrier's actions here not unreasonable.

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 **notviolated**.

A W A R D

Claim 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

