

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24932
Docket Number MW-24975

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(National Railroad Passenger Corporation (Amtrak))

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

(1) The thirty (30) days of suspension imposed upon Repairman R. S. Driver for alleged violation of Rules "I and J" was without just and sufficient cause (System Docket 249D).

(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: Claimant R. S. Driver entered service on July 25, 1977. On June 25, 1981, Claimant was notified to attend a formal trial to investigate a charge against him that stated in part that he was "in violation of NRPC Rules of Conduct I and J in that: you were quarrelsome and/or vicious as well as threatening in a violent manner ...". After postponement the trial was held on July 16, 1981. On July 27, 1981 Claimant was notified that he had been found guilty of violating both rules of conduct and was given a thirty (30) day suspension.

A complete review of the record as handled on property indicates that Claimant admitted to being quarrelsome and as such was clearly guilty of violating Rule I which requires employes to refrain from quarrelsome behavior. Rule J of the General Rules of Conduct requires that the employe not engage in threatening behavior. The accepted norm in the Railroad Industry is that there be substantial evidence defined as "such relevant evidence as a reasonable mind might accept as adequate to support a 'conclusion'" (Consol. Ed. vs. Labor Bd. 305 U.S., 197, 229). With regard to the evidence of a knife being in the hand of the Claimant during the quarrel, there is no dispute. The display of a knife is a serious matter and cannot be taken lightly by this Board in assessing whether such knife constituted a threat under the circumstances as evidenced in the trial record. Although there are conflicting perceptions, after a careful analysis of the trial transcript, it is the position of this Board that there is adequate evidence to substantiate that a real threat was perceived and therefore, Rule J of the General Rules of Conduct was also violated.

In view of the record before this Board, as well as the Claimant's prior record which was introduced on the property, and must be viewed only with respect to the quantum of discipline, this Board cannot conclude that Carrier's determination in this matter was arbitrary, capricious or unreasonable. Evidence presented sustantiates guilt and in the mind of this Board the discipline imposed is not excessive in view of the seriousness of the Claimant's behavior and past record of conduct.

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.