

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25149  
Docket Number U-24112

Wesley A. Wildman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: {

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9491) that:

1. Carrier violated the Agreement Rules, particularly Rule 21, when it applied discipline in the form of a ten (10) day suspension from service against Mr. Vito Cicenias, Assistant General Foreman at Carrier's Wood Street facility account formal investigation held on May 9, 1980, and

2. Carrier shall now be required to compensate Claimant for all time lost account of the involved suspension from service, beginning May 6, 1980, and continuing until he was restored to service thereafter.

OPINION OF BOARD: The subject of this case is an unfortunate incident (perhaps "altercation" would be too strong a word) occurring between an Assistant Foreman and his Terminal Manager which resulted in Claimant being assessed a ten day disciplinary suspension from service.

To move to the "bare bones" of the matter, Carrier alleges that Claimant, receiving a clear and direct order from the Terminal Manager to go out into the yard to attend to his duties, did not move to obey the order but, instead, became argumentative, finally virtually challenging the Terminal Manager to remove the Claimant from service if the Terminal Manager was not satisfied with Claimant's performance on his job. There is, as one might expect in a case of this sort, conflicting testimony from Claimant and the Manager as to precisely what transpired, the actors' perception of events, etc. However, some relatively strong light is shed on the whole matter by what we deem to be significant testimony from an employe present at the time of the incident which is highly corroborative of the Carrier's key contentions, 1), that Claimant had received an order to proceed to the yard, 2), that Claimant was not in fact complying with that order and, 3), that Claimant did, indeed, display a lack of reasoned response which culminated in his virtually offering to be taken "out of service".

In short, we find no reason on this record to overturn Carrier's credibility assessments or to substitute our judgment for theirs with regard to proper discipline to be assessed in this case.

Finally, we do not find grounds for sustaining the Organization's allegation in this case that Claimant was denied due process as a result of the fact that the Carrier official rendering the initial decision on the discipline also judged the case on one level of the appeal process. The hearing in this case was full and complete and without taint of prejudice; the Carrier official in question did not testify or otherwise participate in the hearing. This one instance of "multiplicity of roles" which marked the processing of this case on the property did not, in any way we can detect, unduly or fatally prejudice Claimant's due process rights to have this matter fairly decided.

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

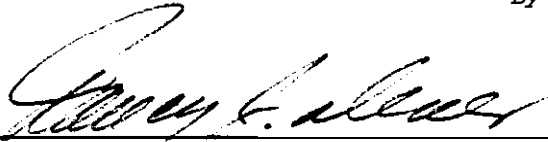
That the Agreement was not violated.

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 9th day of November 1984.

