

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25275
Docket Number CL-24791

Rodney E. Dennis, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station **Employees**
PARTIES TO DISPUTE: {
{ **The** Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-96461 that:

(1) Carrier violated the Clerk-Telegrapher Agreement when, on June 20, 1980, it imposed thirty (30) days' suspension from Carrier's service to Mr. W. C. Ebberts, Material Distributor, Baltimore, Maryland, following the leveling of charges on May 15, 1980, and Carrier failed to conduct the investigation within the time-frame agreed-to by the Parties and it issued a disciplinary decision that was unreasonable, arbitrary, capricious and discriminatory, and

(2) As a result of such improper action, Carrier shall be required to compensate Claimant W. C. Ebberts for all wages lost between the suspension period of June 20, 1980, through and including July 19, 1980, and that Mr. **Ebbert's** service record be cleared of the charges and **disciplinary** measures therefrom.

OPINION OF BOARD: Claimant W. C. Ebberts is a Material Handler employed by Carrier at its Riverside Facility in Baltimore, Maryland. On May 12, 1980, while on duty at the Riverside stores supply room, he became involved in an altercation with Conductor Davis **over** the use of the telephone. On May 15, 1980, Claimant, as well as the Conductor involved, was ordered to appear at a hearing into the matter. Claimant was charged as follows:

You **are** charged with responsibility in connection with personal injury sustained by Conductor G. Davis at Riverside, Baltimore, Maryland, approximately **8:30 P.M.** Attend a hearing at 9:00 a.m. on May 20, 1980.

The hearing was convened as scheduled and upon the request of Conductor Davis, it was adjourned. The hearing was eventually reconvened and ultimately conducted on June 2, 1980. A transcript of the hearing has been made a part of the record of this case. A review of that record reveals that Claimant and Conductor Davis did engage in a verbal altercation and that there was some pushing and shoving by each man. Carrier concluded at the conclusion of the hearing that Claimant's involvement in the incident called for a thirty (30) day suspension and that Conductor Davis was deserving of a ten (10) day suspension for his part in the incident.

This Board has carefully reviewed the total record of this case and concludes that the Claimant received a full hearing and was afforded all rights guaranteed by Agreement. It also reveals that both Claimant and Conductor Davis were aggressors in the confrontation. The record does not support Carrier's decision to administer discipline in this case in an unequal manner. The record reveals that Conductor Davis provoked Claimant by making a telephone call to the Trainmaster and inventing a complaint. This behavior was provocative and doubtlessly was a major cause of the problem. It is axiomatic in industrial discipline that like **employees** who commit like offenses should receive like discipline. We feel that that principle should apply here. We are therefore reducing the thirty (30) day suspension to a ten (10) day suspension. Claimant shall be reimbursed for all lost wages beyond the ten (10) day suspension.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion,

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.

