

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25655  
Docket Number MS-25326

Robert W. McAllister, Referee

PARTIES TO DISPUTE: (Charles M. Patrick  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"System **Docket** 2060-D - Discipline of thirty (30) days deferred suspension, concerning Alleged Failure to Comply with Instructions, **Falsly** (sic) issued by P. M. Sawyer.

Conrail System Docket 2061-D - Discipline of Dismissal, Concerning **Alleged** offenses of insubordination, absenting myself from my position without permission and violation of General Rule 21 of the **S7-C Safety Rules.**"

OPINION OF BOARD: By notice of October 31, 1983, the Claimant, Charles M. Patrick, served notice of his intention to file **an ex parte** submission, involving the issuance of a thirty day deferred suspension for failing to comply with instructions and discipline with dismissal for insubordination, absenting himself without permission, and violation of Safety Rules. The Claimant denies he failed to follow instructions and contends his concern for his men's safety led him to request safety from Supervisor P. M. Sawyer. It is also asserted the Claimant was instrumental in having the Carrier cited by **OSHA.**

The Carrier argues that an individual or his labor union may submit a **grievance** to the **Adjustment** Board. It contends, **however**, that the Law does not permit the tandem handling of a dispute as the Claimant has submitted herein. It is pointed out that the Claimant's submission has taken two separate and unrelated disciplinary actions and presented them as one case under one "Statement of Claim." Furthermore, the Carrier notes the Organization, by date of November 10, 1983, served Notice of its Intent to file **an Ex Parte** submission on the Claimant's dismissal.

The record discloses that the thirty day deferred suspension arose out of circumstances which occurred on December 3, 1982, and which were related to asserted instructions given to the Claimant to install shoring in an open trench. The dismissal action is the result of Claimant's charged actions of December 30, 1982, involving a claimed injury, insubordination, the Claimant absenting himself from his position, and violation of Safety Rules.

It is **well** settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer. The Board may not reverse the Carrier's determination merely because of conflicts **in testimony.** The evidence in the present **casewas** sufficient to warrant Carrier's action in imposing the discipline that it did.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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.

**AWARD**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: \_\_\_\_\_

  
Nancy G. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1985.

