

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25846
Docket Number MW-26154

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

"(1) The dismissal of Machine Operator E. A. Price for alleged 'Violation of Conrail's Safety Rule 3013 for Maintenance of Way Employees at approximately 6:00 A.M., Wednesday, June 1, 1983' was unwarranted and unreasonable (System Docket CR-259D).

(2) The Claimant shall be reinstated with seniority and all other rights unimpaired, his record be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant's violation of Safety Rule 3013 was well supported and admitted. Claimant specifically testified he grabbed the Cook of their Tie Gang TK-221 and scuffled with him. The explanation was that Claimant had been verbally provoked at the time by the Cook. The entire encounter transpired at breakfast time on June 1, 1983, in a kitchen car at Carrier's camp car headquarters.

Rule 3013 reads, "(p)ersonal conduct must be free from scuffling, practical jokes or horseplay while on duty or on company property."

Testimony given by one witness to the event in the kitchen car was that he saw Claimant hit the Cook in the side in the area of the Cook's lower ribs. Another witnesses's description of the admitted scuffling was that Claimant grabbed the Cook, was throwing him around the kitchen car, and had the Cook lying over the side of the kitchen car counter.

The Cook testified to being punched more than once by Claimant, and, at one point in the sequence, the Cook stated that he fell against the kitchen car counter.

The record shows that the Cook suffered bent glasses, a torn shirt, and suffered from pain from bruised ribs, and that the company doctor placed him on disability for the next three weeks, as non qualified for work.

It has long been accepted that severe discipline may be meted out when the altercation leads to bodily harm. In Second Division Award 2191 we note the following:

". . . It is the duty of a Carrier to protect its employes while on duty from the risk of being physically assaulted by a fellow employe when it knows the latter has such propensities."

Claimant's past record reveals a fourteen day suspension for threatening Acting General Foreman C. F. Cepek with bodily harm at Weirton, West Virginia.

In this case, we find the discipline by dismissal was fully warranted and not excessive.

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 Employes involved in this dispute are respectively Carrier and Employes 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 13th day of January 1986.

