

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25849
Docket Number MW-25772

Herbert L. Marx, Jr., Referee

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

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

(1) The twelve (12) working days of suspension imposed upon Camp Attendant T. Christmas for allegedly 'Threatening foreman, J. J. Smith with bodily harm' and allegedly 'Reporting for duty in an intoxicated state' was without just cause and on the basis of unproven charges (System Docket CR-66-D).

(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 is a Trackman assigned to duty living away from home in a Camp Car. He was subject to an Investigative Hearing on the charges of threatening his Foreman "with bodily harm" and "reporting for duty in an intoxicated state". As a result of the hearing, Claimant was assessed a disciplinary penalty of 12 working days' suspension.

The incident giving rise to the charges concerned events of August 4, 1982, when the Foreman awoke the Claimant in the camp car prior to the work day. The Foreman testified as follows:

"I woke Thomas Christmas twice. I left the Camp Train, went to the office, I told Dick and Ed that I don't think Tom is going to make it. So, it was time to go to work, I was heading back towards the bus, as I was going up the step to my car to get a hanky, Tom was yelling at me, yelling Joe Smith. He yelled twice to me, Joe Smith. He said to me don't ever come back to our car again, if you do, I am going to kill you, and I said what did you say, you heard what I said, I am going to kill you. I went off the step, I gave him a little shove and I told him, if you threaten me, you better do it now, if not, don't ever threaten me again. Mean time, somebody walked by, told Tom to lay down, make believed that Joe heard you back, so he squat down, so a couple men gathered around, one guy grabbed hold of Tom, picked him up, told him to get on to the bus.

Q. Mr. Smith, who gave you orders to go through the camp cars and wake people up.

A. My orders since we moved here was by our Supervisor, but the Supervisor was not there that morning, so, the Foreman, told me to go through.

Q. Mr. Smith, in your conversation with Mr. Christmas, was there anything different about Mr. Christmas, was he dressed for work.

A. Yes, he was dressed for work. To my opinion, he was intoxicated.

Q. Mr. Smith, did you do anything else on the morning of 8/4/82, other than wake up Mr. Christmas.

A. Yes. I was out on the job, Mr. Fleming, the Supervisor, came to me and asked me what happened. I told him, he said that Tom was in the Camp Train and that he wanted to go to the hospital, that, he said that I hurt his back, so I came in to the Camp Train, called Mr. Spirk, and I talked to him.

Q. Mr. Smith, when Mr. Christmas allegedly threatened you, did he have any weapons.

A. Well, we had this trouble on this Gang before, a Foreman was killed, and with him being toxicated, I did not know if he had anything in his pocket or not. That is the reason I went down at him.

Q. Mr. Smith, when you pushed Mr. Christmas, did he fall to the ground.

A. No, Sir."

In his testimony, the Claimant denied that he had threatened the Foreman, although he stated he did have a conversation with the Foreman outside the camp car. As to alleged intoxication, the Claimant testified that, "I had been out the night before, I had been drinking kindly [kinda] heavy." Further, when taken to the hospital at his request in reference to a possible back injury, the Claimant was found to have a blood alcohol content level well in excess of the legal intoxication limit.

The Organization questions the propriety of a finding of guilt based on the testimony of only one "witness" (here, the Foreman who directly observed the Claimant). Discussion of this is rendered moot, however, by the Claimant's own testimony as to "heavy" drinking prior to duty and the measure of his blood alcohol level. Without regard to the alleged threat to "kill" the Foreman, the resulting penalty of a 12-day suspension for intoxication is mild, and there is no basis to question the Carrier's judgment.

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. Dover - Executive Secretary

Dated at Chicago, Illinois, this 13th day of January 1986.