

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26065
Docket Number MW-26054

Peter R. Meyers, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company
(Southern Region)

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

(1) The dismissal of B&B Mechanic, H. L. Moore, for alleged 'conduct unbecoming an employee' was excessive and wholly disproportionate to the charge leveled against him (System File C-D-1910/MG-4185).

(2) The claimant shall be reinstated with seniority and all other rights and benefits unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a Bridge and Building Mechanic by the Carrier. Claimant had almost four years of service with the Carrier. On the morning of August 5, 1983, Claimant and his Foreman became involved in a shouting match and physical altercation. On August 8, 1983, Claimant was notified to attend an Investigation of the incident on August 19, 1983. As a result of the Investigation, Claimant was dismissed from service. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence in this case, and we find that there is sufficient evidence in the record to sustain the Carrier's finding that the Claimant was guilty of conduct unbecoming an employee when he engaged in a verbal and physical altercation with his Foreman. The Claimant admitted striking the Foreman, as well as engaging in a shouting match with him. Hence, the Carrier was within its rights to take disciplinary action against the Claimant.

Once this Board determines that a Carrier had sufficient evidence to find a Claimant guilty and thereby imposed discipline against him in a particular case, we next turn our attention to the type of discipline imposed. It is well settled that this Board will not set aside a Carrier's imposition of discipline unless it is found to be unreasonable, arbitrary, or capricious. In this case, the Carrier assessed the discipline of a sixty-day suspension to the Supervisor for engaging in the same altercation. Obviously, the Carrier recognized that both the employee and the Supervisor were responsible for the events that occurred on that date. Moreover, based upon the Claimant's length of service and his relatively good work record, this Board finds that the Carrier acted unreasonably and arbitrarily when it terminated the Claimant for the offense. We will award that the Claimant be reinstated with seniority and all other rights unimpaired but without compensation for time lost.

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

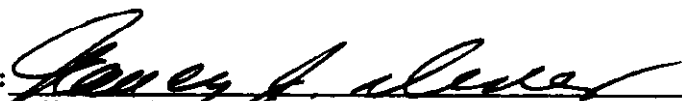
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1986.

