

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26111
Docket Number MS-26352

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Rodney A. Bargar
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"1. Violation of rule 3013 of the safety rules for M. of W. employees (S7-C).

2. Violation of general rule D of the rules of the Trans. Dept.

3. Violation of general rule E of the rules of the Trans. Dept.

4. Absenting yourself from your assigned duties at approx. 6:30 a.m. on June 26, 1984 at Conway, PA., when you were involved in an altercation with Supervisor R. P. Miller at Conway, PA on June 26, 1984 at approximately 6:05 a.m."

OPINION OF BOARD: Claimant, a Trackman, was charged with violation of Safety Rule 3013 and Safety Rules D and E of the Rules of the Transportation Department which, amongst other conduct, prohibit fighting. After hearing on the charges, by letter dated July 25, 1984, Claimant was dismissed from employment.

The Hearing revealed that Claimant admittedly and knowingly physically struck his Supervisor R. P. Miller, while on duty. Claimant testified as follows:

"Q: Did you strike Mr. Miller with your car door as it opened?
A: Yes.

* * *

Q: Did you realize that Mr. Miller was in the area of the door when you opened it?
A: Yes, I knew he was there....

* * *

Q: Did you realize that the door might contact him before you opened it?

A: I never thought about it. When he was yelling at me I didn't care if it did or not."

Claimant took this action after receiving work related instructions from his Supervisor. As a result of Claimant's actions, the Supervisor was rendered unconscious for a period of three to five minutes and further sustained minor injuries.

Based upon our review of the record, we find that there was substantial and credible evidence to support the Carrier's determination that Claimant was guilty of the charges. Indeed, we find that Claimant admitted that he struck his Supervisor as alleged.

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

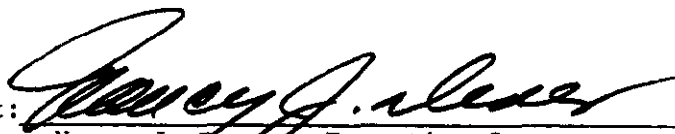
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 19th day of September 1986.

