

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26179
Docket Number MW-26491

Edwin H. Benn, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(National Railroad Passenger Corporation (Amtrak)-
(Northeast Corridor

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

(1) The dismissal of Foreman B. H. Matthis for alleged violation of Rule 'I', was arbitrary, capricious and without just and sufficient cause (System File NEC-BMWE-SD-808D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant commenced service with the Carrier on March 30, 1977. On February 9, 1984, the date of the incident involved in this matter, Claimant held the position of Track Foreman.

Claimant and the Organization do not dispute the basic underlying facts in this matter as exhibited by the Investigation Transcript. As a result of Claimant's job performance, Claimant's Supervisor, Track Supervisor P. Adamovich, preferred charges against Claimant due to the alleged non-completion of a job where plates had not been reinstalled, spikes were missing and insulation was left on the ground adjacent to a job site.

At approximately 4:10 P.M. on February 9, 1984, in the Carrier's office, Claimant approached Assistant Track Supervisor D. Hammond and repeatedly asked Hammond for the identity of the individuals who preferred the charges against him. Hammond responded that Claimant's Supervisor had done so. Claimant kept repeating "I didn't ask who signed the papers, I asked who brought charges against me." Claimant threw down his keys and then lunged towards Hammond and stated "I'm older than you. Who the f--- do you think you're talking to?" According to General Foreman M. Rossiter, Claimant told Hammond that he was going to "knock [your] f----- head off." At this point, M/W Foreman R. Gallagher, got between Claimant and Hammond and attempted to calm Claimant down. Claimant told Hammond that he was "going to beat [your] ass." Claimant then stated "I know who brought charges against me, you and him," referring to Hammond and Rossiter. Hammond told Claimant that he worked nights and knew nothing about the charges. Claimant responded, "Well, I'll find out. I'll get my gun and I'll shoot all of you and then I'll find out who brought charges against me." Claimant then left the office.

At approximately 4:35 P.M. on the same date, Claimant approached Adamovich in the General Foreman's Office at the Toolhouse. Claimant and Adamovich began discussing why Adamovich had preferred charges against Claimant. Claimant repeatedly asked Adamovich why every time that he turned around Adamovich was serving Claimant with a Trial Notice. After further discussion about the job that lead to the most recent charges, Claimant picked up a telephone and smashed it on the floor, stating that he "was tired of this sh---." Claimant became very irate and was shouting. Claimant kept stating that Adamovich was harassing him, and as Adamovich was putting up his arms in an effort to calm Claimant down, Claimant began taking mock swings at Adamovich. M/W Foreman M. Holland, and shortly thereafter, another employee T. Gould, then entered the office and got between Claimant and Adamovich and proceeded to hold Claimant away from Adamovich and further attempted to calm Claimant down. In their efforts to calm Claimant down, Holland and Gould lifted Claimant off the floor. During the ensuing struggle, Claimant was able to get on top of a desk and was swinging wildly. Claimant proceeded to punch a hole in one of the window panes behind the desk. Holland and Gould were then able to confine Claimant to a corner. Claimant's hand was bleeding severely and it was necessary to have twelve stitches to close the wound. Claimant was restrained for approximately ten minutes. Adamovich called the C & S Trouble Desk and asked them to call the Carrier's police. Assistant Track Supervisor K. Webb then arrived. Claimant then told Webb "don't laugh; I'm going to get your fat, f----- ass too." Claimant next turned to Adamovich and stated "I'm going to get your little ass too". According to Webb, he asked Claimant what the problem was and while being restrained, Claimant stated "I'll f--- you up" and then lunged towards Webb.

Claimant then got in his van to drive to the local hospital for medical attention. Claimant drove his van towards Webb in a fashion characterized by another witness, Safety Engineer M. Pollick, with tires spinning so as to be "out of control." Webb had to move out of Claimant's way in order to avoid being struck.

Claimant stated at the Hearing that in his state of mind at the time of the incident:

"There is very little that I am aware of that happened throughout that incident. I could attribute it to temporary insanity. I feel that I have no legal explanation for the events that took place. I did try to apologize to all parties concerned with the incident. If I have missed someone, I would at this time like to extend my apologies to all concerned. Somewhere along the line, maybe, I got caught up with a lot of emotional problems I have right now. I am right in the middle of buying a house, which I hope to have within the next few weeks. I also started arrangements for a wedding in September to someone very close to me, naturally. Just everything built up inside me and it came out at that time.

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That's my only defense, or whatever, to these charges. I feel as though it is not necessary to go on with a trial of this magnitude because of that; because what can I possibly say? How many times can I say I'm sorry? That's the first time in my life I have ever exploded to that extent. I don't know why I blew up like that. People say, you know, different things trigger different things. People let their own hostilities come out in different ways. If I had been in my own state of head, it probably never would have happened. I pride myself on controlling my temper to an extent, but it got away from me.

There's nothing I can do to change what's happened, other than to say I'm sorry."

Claimant asserts that he does not own a gun. However, Claimant holds a green belt in karate and has trained in karate for twelve years.

After Hearing on February 14, 1984, Claimant was discharged for violating the Carrier's Rules of Conduct particularly Rules I and J. Those Rules prohibit quarrelsome or vicious conduct, use of boisterous, profane or vulgar language as well as violence or threatening or interfering with other employees.

As earlier noted, the Organization does not really dispute that the incidents took place as alleged. However, the Organization argues that the discipline imposed was excessive. We have carefully reviewed the record and have taken pains to detail the conduct attributed to Claimant. Inasmuch as there is no real dispute that the conduct attributed to Claimant in fact occurred, our role in this matter is to determine if the Carrier's imposition of discharge under the circumstances was arbitrary, capricious, discriminatory or an abuse of discretion. After a review of the incidents, we cannot make such a finding as the Organization would have us do.

This is not a case where the misconduct was an employee's brief loss of rationality resulting in a relatively harmless outburst attributable to emotional pressures on that employee. This case amounted to a prolonged incident that involved not only the use of profane and abusive language, but rose to the level of verbal threats to several employees including the threat of use of a gun and actual attempts at physical attacks upon fellow Supervisory employees including the attempted running over of an employee with a motor vehicle, some of which acts required physical restraint. In addition, Claimant's activities resulted in the destruction of property. We are quite mindful of Claimant's expressed contrition for the events, the need for rehabilitative discipline as opposed to discipline in the nature of retribution and, although disputed, we shall assume for the sake of argument that Claimant's past record was relatively good. However, under the circumstances of this case, and even

further considering Claimant's length of service, those factors do not mitigate the gravity of Claimant's actions. We can only speculate what consequences would have resulted but for the timely intervention by fellow employees who physically restrained Claimant from achieving his goal of physically attacking other employees who Claimant thought questioned Claimant's job performance. To award Claimant reinstatement may well pose a potential safety risk to other employees in the future should the circumstances again be present to cause a similar loss of control by the Claimant. We therefore can find nothing in the record to justify a conclusion that the Carrier's decision on the amount of discipline was arbitrary, capricious, discriminatory or an abuse of discretion.

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

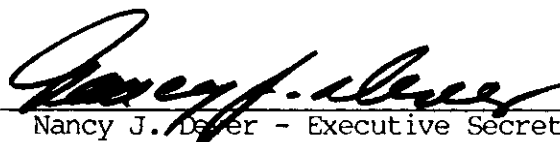
That the Agreement was not violated.

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 24th day of November 1986.

