

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26603
Docket Number MW-26218

Gil Vernon, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(The Chesapeake and Ohio Railway Company (Northern Region
(excluding Hocking Division)

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

1. The ten (10) working days of suspension imposed upon Trackman G. R. Davis for allegedly assaulting his track supervisor and conduct unbecoming an employee at approximately 10:45 A.M. on September 22, 1983 was unjust, unreasonable and on the basis of unproven charges (System File C-D-2036/MG-4376).

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: On September 18, 1983, the Carrier directed the Claimant to attend an Investigation. The notice read in pertinent part as follows:

"Arrange to attend a hearing in the Office of Manager-Engineering, 306 One Northland Plaza, 20755 Greenfield Road, Southfield, Michigan at 9:30 a.m. Tuesday, October 11, 1983.

You are charged with responsibility, if any, for assaulting your Track Supervisor and conduct unbecoming an employee at the track headquarters at 2938 Ferney St., Dearborn, Michigan at approximately 10:45 a.m. Thursday, September 22, 1983."

Subsequent to the Hearing, the Claimant was found responsible for "assaulting your track supervisor and conduct unbecoming to an employee . . ." and assessed the discipline now on appeal before the Board.

After reviewing the record, the Board cannot find the Claimant guiltless. However, the testimony of two witnesses strongly suggest that the Supervisor's conduct was rather provocative. This provides significant mitigation and compels us to conclude, based on this record, that a 10-day suspension is excessive. Five days is the maximum justifiable penalty given the Supervisor's behavior.

Accordingly, the discipline is reduced to five days and Grievant is to be paid the difference in wages.

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 27th day of October 1987.