

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way **Employees**  
(The Washington Terminal Company

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

(1) The dismissal of **Trackman P. J. Marra** for allegedly 'Physically Assaulting a Supervisor' was without just and sufficient cause, arbitrary and **on the** basis of unproven charges.

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the **employee** or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The significant events leading to this Claim arose on May 2, 1984. On that date, the Claimant became involved in an altercation with his Supervisor. Subsequent to an investigation into the matter, it was determined by the Carrier that the Claimant provoked and then physically assaulted his supervisor, resulting in the Supervisor receiving injuries.

The Organization, relying upon its review of the testimony adduced at the Hearing, contends that the Claimant, in fact, was attacked by his Supervisor. **It** maintains, and was provided a detailed analysis for its reasoning, that the Carrier has not met its burden of proof and, therefore, that the Claim should be sustained.

The Board has carefully reviewed the evidence and has considered the various contentions advanced by the parties. Clearly, there is conflict of testimony. However, even though the evidence is controverted, it is sufficient to justify the conclusion of guilt. **We** have stated on many occasions that it is not our function to resolve conflicts in testimony and that we will not disturb discipline case findings which are supported by credible, though controverted, evidence.

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Award No. 26786  
Docket No. MW-26343  
88-3-85-3-238

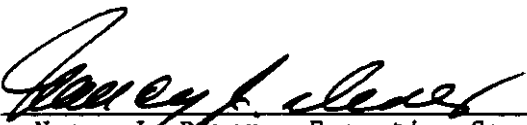
It is also well-accepted that men working together may not strike each other. When an altercation does occur. the instigator subjects himself to possible discharge. For an employee to strike a Supervisor is clearly unacceptable behavior.

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 28th day of January 1988.