

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

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

(1) The ninety (90) days of suspension imposed upon B&B Mechanic H. Brown for alleged violation of Rules 'F-2' and 'F-7' on January 31, 1986 was without just and sufficient cause (Carrier's File CR-BMWE-97).

(2) The Claimant's 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 employe or employes involved in this dispute are respectively carrier and employes 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.

Claimant entered Carrier's service as a B&B Mechanic at Carrier's New Orleans, Louisiana passenger station on July 23, 1982.

By letter dated February 6, 1986, Claimant was notified to attend an Investigation on February 13, 1986, for his alleged violation of Rules F-2 and F-7 in connection with charges he had a knife in excess of three inches long in his possession and threatened another Amtrak employee (B&B Mechanic D. Davis) with same at approximately 1:00 PM on January 31, 1986.

Following the Investigation, by notice dated February 21, 1986, Carrier's General Supervisor suspended Claimant 90 days (March 3 thru May 31, 1986, inclusive).

Facts developed at the Investigation reveal that while B&B Mechanic Davis and Claimant were installing short ties beneath the running rails in the Coach Yard inspection pit, Claimant elicited an argument with Davis from which Davis walked away. Davis testified that at that point, Claimant "...jumped out of the pit and pulled his knife, kept telling me he was going to cut me....," and continued to threaten him as he followed him to his truck and

eventually to the District Engineer's office where Davis reported the incident. Davis' testimony was corroborated by the District Engineer, concerning the appearance of the involved employees in his office following the incident and the confiscation of the 3 3/8" non-folding, hawk-bill knife in question from Claimant's person at that time. Davis' testimony was also supported by the testimony of a Material Control Clerk who stated he was in the vicinity at the time of the incident, heard Claimant and Davis yelling at each other, and witnessed Claimant "...waving a knife around..." while following Davis in an apparent heated discussion. While the Material Control Clerk testified that he was unable to discern all of the words exchanged, he did hear Davis retort to Claimant, "...you ain't going to cut anybody."

The Claimant stated that he was "provoked" when Davis called him a name which reflected upon the Claimant's mother. He further contended he only used the knife for work-related purposes.

We find substantial evidence in the record that Claimant's conduct violated Rules F-2 and F-7. Under the circumstances, the fact that Claimant asserts that he was "provoked" is no excuse for his threats of physical violence to a fellow employee. See Third Division Award 25796. We also find that the assessment of a 90-day suspension was not too severe, as claimed, particularly in view of the fact Claimant's prior record included a waiver of investigation and acceptance of a 60-day suspension in 1984 for a similar assault upon an employee with a hammer. We will therefore deny the Claim in its entirety.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.