

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 sixty (60) days of suspension imposed upon B&B Mechanic D. D. Davis for alleged violation of Rule 'F-2' on February 12, 1986 was unduly harsh and excessive (Carrier's File CR-BMWE-96).

(2) The Claimant's record shall be cleared of the charge 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 on March 23, 1984, in the Bridge and Building Department at Carrier's New Orleans, Louisiana passenger station.

By letter dated February 12, 1986, Claimant was notified to attend an investigation on February 18, 1986, for his alleged violation of Rule F-2 on February 12, 1986, in connection with the charge he intentionally struck another Amtrak employee (B&B Mechanic H. Brown) with a Carrier-owned truck and left the scene without reporting the accident.

Following the investigation, by notice dated February 26, 1986, Carrier's General Supervisor suspended Claimant 60 days (March 3 thru May 1, 1986, inclusive).

Facts developed at the investigation reveal that B&B Mechanic Brown reported to work on February 12, 1986, apparently fit and uninjured. He and Claimant were assigned to paint a room located in the New Orleans Union Station. While painting, the two men became involved in an argument resulting in Brown allegedly pushing the Claimant. Claimant left the room intending to

report the incident to the District Engineer. When Claimant got into the truck, Brown decided to accompany him. As Brown opened the door and attempted to get into the truck, the two men again exchanged words to the effect that the Claimant did not want Brown to ride with him. Claimant started to back the truck up, at which time the open door struck Brown, and he sustained a contusion to his right knee.

Although Claimant denied hitting Brown with the truck, it remains unrefuted in the record that Brown reported to work uninjured, and immediately following the incident, was examined by two Carrier physicians who reported he had sustained an injury corresponding to that which he asserted he incurred when the truck operated by Claimant made contact with his knee.

As noted above, there is a conflict in the testimony here, and the Carrier chose to believe the version advanced by Brown rather than that of the Claimant and his witness whose testimony was impeached. We cannot say this was wrong. As we held in Third Division Award 21278:

"This Board functions as a reviewing authority and it cannot substitute its version of the facts for that reached by the trier of facts who heard the testimony, observed the demeanor of the witnesses and, by its proximity, was entitled to weigh and evaluate the credibility of witnesses. So long as the conclusions reached are based upon substantial evidence in the record they should not be overturned."

Here, Brown's testimony was supported by the physical evidence of his injury as documented by two Carrier physicians.

We conclude the penalty imposed here is neither unduly harsh nor excessive as claimed. There is no proper basis for the Board to interfere with the discipline imposed.

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 30th day of August 1988.