

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27479
Docket No. MW-26812
88-3-85-3-574

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

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

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

(1) The discipline imposed upon Truck Driver T. Oates for alleged violation of Rules 'H' 'I' and 'J' on June 8, 1984 was without just and sufficient cause (System File NEC-BMWE-SD-963D).

(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 employees 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 in July of 1976 and at all times relevant to this dispute held the position of Truck Driver on Carrier's Baltimore Division. By letter dated June 8, 1984, Claimant was notified to attend an investigation in connection with his alleged violation of Rules "I", "J", and "H" of the NRPC General Rules of Conduct when, on the morning of June 8, 1984, Claimant was insubordinate to his supervisor and damaged Carrier property. Following the investigation on June 19, 1984, Claimant was assessed an actual suspension of thirty days. Claimant thereafter filed the instant claim, which was progressed through the various levels of appeal. After a conference on November 15, 1984, Carrier modified the discipline assessed by reducing the suspension to twenty days and compensating Claimant for any work days in excess thereof which were lost.

Based upon review of the record evidence in its entirety, we conclude that there was substantial evidence adduced at the hearing that Claimant committed the acts for which he stands accused. Carrier witnesses uniformly testified that Claimant was insubordinate and directed vulgar and profane language toward his supervisor when he was asked to relate the details of an incident that had occurred in connection with his personal vehicle earlier on the morning of June 8, 1984. According to the Supervisor, Claimant became "irrational and angry" and struck the fender of the Carrier truck in which he was riding, putting a dent in the fender. In addition, the Supervisor testified, Claimant walked away from him, shouting obscenities, and did not return despite his order to do so. The General Foreman, who was present at the time of this incident, corroborated the Supervisor's testimony.

Claimant really does not dispute that he was upset and angry on the morning in question. He testified that at about 11:00 p.m., June 8, 1984, he had been notified that his private automobile had been struck by a Carrier-owned van operated by a Repairman. Because he was at the job site at Regan Interlocking, Claimant testified that he expressed a desire to report the incident to the Amtrak police immediately while the accident site looked much the same as when the incident occurred. Carrier supervision told Claimant that he could fill out the report at the close of duty. When Claimant was still not satisfied, the Supervisor was summoned. Claimant stated that a dispute arose because the Supervisor told Claimant that his car was parked illegally and, therefore, Carrier would not be liable for any damage. Claimant admits that this comment caused him to lose his temper and hit the Supervisor's vehicle with his hand. Claimant denies that he was insubordinate or abusive in any way.

The Organization contends that the charges leveled against Claimant are without merit. In the Organization's view, Claimant had justifiable and sufficient cause to become upset with the treatment he was receiving from the Supervisor. The Organization maintains Claimant simply became "fed up" with the actions of Carrier officials and, while his outburst was unfortunate, it was the result of Carrier provocation.

We do not concur with the Organization's position. It is inherent in the work relationship that personnel must conform to certain well-known, commonly accepted standards of reasonable conduct while on the job. The Board stated in Third Division Award 21299:

"Published rules and regulations are not necessary to inform an employee that misconduct such as fighting or using vulgar language combined with threats may subject him to discipline or discharge . . . Such behavior is not excusable because the offender is in an agitated emotional state. When an employee lacks the emotional stability and rational judgment to restrain himself from outbursts, he also lacks the minimum qualifications to be retained as a member of the work force."
(Emphasis added.)

In this case there is a conflict in the testimony as to whether Claimant used abusive language and directly defied his supervisor's order. However, it is not the function of this Board to determine who is telling the truth. That credibility determination must be made by those holding the investigation, and the Board may not substitute its judgment for that of the Carrier in that regard. Moreover, we note that while Claimant maintained his innocence, he admitted that he lost his temper and hit the Carrier vehicle.

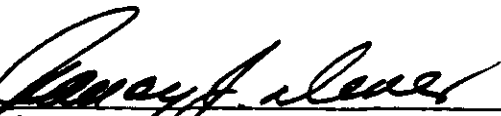
It is the Board's view that while Claimant may have been understandably upset upon learning that his private automobile had been damaged, this in no way presented Claimant with justification to engage in the behavior which necessitated the charges against him. To the contrary, the record suggests that Carrier supervisors were attempting to provide assistance to Claimant with regard to the incident involving his personal automobile and he was to have been given the opportunity to contact Amtrak police. Claimant's conduct was unreasonable and unwarranted, and the assessment of discipline herein cannot be viewed as arbitrary or capricious. Accordingly, we must rule to deny the claim.

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 22nd day of September 1988.