

The Third Division consisted of the regular members and in addition Referee W. F. Euker when award was rendered.

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

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

(1) (a) The thirty (30) days' suspension imposed upon Trackman B. A. Cook and Trackman D. Barajas for alleged involvement in an altercation while riding in Carrier truck on March 18, 1986 was harsh and unjust (System File C-D-3256/MG-5732).

(b) The dismissal of Trackman B. A. Cook and the thirty (30) days' suspension imposed upon Trackman R. M. Blake for alleged violation of General Safety Rule No. 4 on March 21, 1986 was without just and sufficient cause (System File C-D-3257/MG-5731).

(2) The Agreement was violated when Division Manager D. Cranshaw failed to disallow either of the two claims presented to her on May 13, 1986 as contractually stipulated within Agreement Rule 21(h)(1)A.

(3) As a consequence of either or both Parts (1) and/or (2) above, Claimant B. A. Cook shall be reinstated with seniority and all other rights unimpaired and Claimants B. A. Cook, R. M. Blake and D. Barajas shall have their records cleared of the charges leveled against them and they shall be paid 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.

This is a discipline case involving two separate incidents in which Claimants Barajas and Blake allegedly participated in an altercation with another Trackman on March 18 and 21, 1987, respectively, resulting in an on-duty injury to the third participant. Following a formal investigation for each incident, the Claimants referenced above, were given a thirty-day suspension and the third trackman was dismissed. The claims were handled in the usual manner on the property and then filed with the Board. Subsequent to the filing of the present claim with the Division, the third Claimant resigned from the service, so we are here concerned only with the claims in behalf of one of the two participants in each altercation.

The trial transcript discloses that Claimants participated in a physical confrontation with another employee while they were actively engaged in performing Trackman's duties for the Carrier. The testimony of the Claimants concede they were partially responsible for the escalating argument that finally erupted in physical contact and a resultant injury.

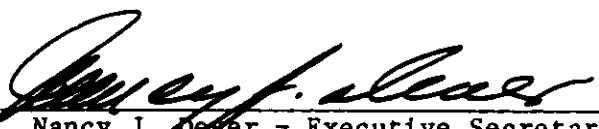
Awards of this Board have repeatedly enunciated the principle that Carrier should not be compelled to tolerate such activity. The rationale for such decisions is well demonstrated by the events occurring in this case, where one of the combatants was injured. This merely reinforces the conclusion that enforcement of the rules is not merely to protect the Carrier but the individual employees as well. The penalty assessed in this case was not disproportionate to the offense committed, consequently we will 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 13th day of April 1989.