

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31980
Docket No. MS-32411
97-3-95-3-285**

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

**(United Steelworkers of America, Local Union 3263
PARTIES TO DISPUTE: (
(Union Railroad Company**

STATEMENT OF CLAIM:

"CLAIM FOR REMOVAL OF DISCIPLINE ASSESSED CAR CONTROL CLERK THOMAS KALUPANOV OF SUSPENSION OF THIRTY (30) DAYS AND HIS SERVICE RECORD CLEARED OF THIS ACTION. ALL LOST TIME BE REPAYED (SIC) TO CLAIMANT (SIC) FOR ANY SUSPENSION SERVED."

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 employee 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 were given due notice of hearing thereon.

After Investigation conducted on February 16, 1995, Claimant, a Yard Clerk with approximately 25 years of service, was assessed a 30 day suspension by letter dated February 27, 1995 for violation of the General Notice, Rules A, B, D and 1105 of the Book of Rules and Instructions when Claimant picked up and dropped a lunch table a number of times resulting in an injury to another employee sitting at the table. The

Carrier subsequently reduced the out of service portion of the suspension to ten days, but maintained the entire 30 day suspension on Claimant's record.

On January 29, 1995, Conductor J. Huether informed Supervisor G. Wilson that his shoulder was bothering him as a result of Claimant lifting and dropping a table Huether was sitting at. According to Huether:

"A. My arm was on it [the table]. It went up two times, up and down."

Supervisor Wilson testified:

"A. ... I asked him [Claimant] to tell me exactly what did happen as far as he was concerned. He told me, yes he did enter the crew room, he did have a cup of coffee in his hand at the time, he did lift the table, although he said he lifted it with his thigh only about an inch off the floor and gently put it back to the floor. I told Mr. Kalupanov at that time that neither I nor the Company would tolerate any horseplay. Mr. Kalupanov told me he understood what I meant."

Claimant testified differently. According to Claimant:

"A. ... I had entered the crew room. I had coffee in my hand. I opened up the door, tripped over the threshold, hit the table and jarred it. My left thigh had gone underneath the table and when straightening up, I did raise the table up an inch or so, whatever that quick reaction of getting up did. I do weigh 230 pounds and I am 6 ft 4 inches and I did move the table, jarring it and it went up and down when I straightened up."

Substantial evidence exists in the record to support the Carrier's determination that Claimant engaged in the misconduct as charged. Claimant's version of the incident that he tripped (which was contrary to what he told Supervisor Wilson) was not credited in the Carrier's determination to issue discipline. It is not the function of this Board to reverse credibility determinations unless clearly justified by the record. The record does not provide a basis for doing so in this case. Instead, the record supports the conclusion

that Claimant engaged in horseplay when he lifted and dropped the table at which Huether was sitting.

The amount of discipline imposed is not arbitrary or capricious. Claimant had a prior ten day suspension for causing damage to a computer keyboard by striking it with his fist. A ten day actual and 30 day record suspension for this misconduct is not excessive.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 6th day of May 1997.