

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35076
Docket No. SG-34355
00-3-97-3-968**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(CSX Transportation, Inc. (former Louisville and Nashville
(Railroad Company)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Louisville and Nashville Railroad:

Claim on behalf of C. E. Stewart for payment for all time lost (including overtime) as a result of his suspension from service from December 10, 1996 to January 10, 1997, account Carrier violated the current Signalmen’s Agreement, particularly Rule 55, when it failed to provide the Claimant with a fair and impartial investigation and imposed harsh and excessive discipline against him in connection with an investigation conducted on December 17, 1996. Carrier’s File No. 15(97-24). General Chairman’s File No. 97-137-01. BRS File Case No. 10426-L&N.”

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.

On December 11, 1996, the Carrier notified the Claimant, a Signal Maintainer, to appear for a formal Investigation to determine his responsibility, if any, in connection with a verbal altercation that included physical contact between the Claimant and B. J. Harnishfeger on the afternoon/evening of December 5, 1996. The Claimant was charged with violating Safe Way Rule No. 1 (subpart g), Operating Rule 501, and conduct unbecoming of a Carrier employee. The Claimant was withheld from service pending the Investigation.

The Hearing took place on December 17, 1996. On January 9, 1997, the Carrier notified the Claimant that he had been found guilty of the charges and was being assessed discipline of a 30 calendar-day suspension starting December 10, 1996, with a return-to-work date of January 10, 1997.

The Organization filed a claim on behalf of the Claimant challenging the discipline. The Organization argues that the Carrier violated Rules 33 and 55 of the parties' Agreement, whereby the Carrier failed to afford the Claimant a fair and impartial Hearing, administered excessive discipline, failed to apply the Rules with reasonable uniformity, and failed to prove the Claimant had violated any Rules. The Organization argues that the Hearing Officer failed to properly question the Claimant and attempted to lead the witnesses at the Hearing to get into the record information to support the Carrier's contentions and concluded that the Claimant was guilty without all facts being presented. The Organization further argues that the Claimant simply pushed Harnishfeger's finger out of his face, which may have caused Harnishfeger to lose his balance, and that Harnishfeger himself admitted that he was not certain whether the Claimant shoved him. The Organization contends that if any discipline were to have been assessed, it should have been a ten-day suspension because this was the Claimant's first offense in 18 years of service for the Carrier. The Organization also argues that the Claimant was under a great deal of stress on the date in question as the Carrier had pulled him from his regular assignment on more than one occasion to take the place of another employee. In addition, the Claimant did everything asked of him by supervision following the altercation and he even underwent counseling. The Organization also argues that the Carrier did not uniformly handle the incident because the Claimant was the only one charged despite the fact that Harnishfeger also participated in the altercation.

The Carrier denied the claim, contending that the Claimant engaged in a heated verbal exchange with employee Harnishfeger and allowed the situation to escalate to the point that he physically shoved the employee. The Carrier argues that such behavior is not tolerated and its discipline was warranted. In addition, the Carrier maintains that threatening and uncivil conduct plus disrespectful/insubordinate behavior towards

coworkers are offenses for which a stern measure of discipline is appropriate. The Carrier also argues that the Claimant was afforded a fair and impartial Hearing and that the Hearing Officer conducted the proceedings appropriately.

The Board reviewed the procedural arguments raised by the Organization and finds them to be without merit.

With respect to the substantive issue, the Board reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating the cited Carrier Rules when he engaged in an altercation with a coworker on December 5, 1996. At the Hearing, the Claimant admitted that he was wrong by engaging in the altercation.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside the Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

In this case, the Claimant received a 30-day suspension for engaging in a verbal and physical altercation with another employee. Employees are often discharged after similar incidents of wrongdoing. Consequently, the Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued a 30-day suspension to the Claimant. Therefore, the claim will be denied.

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 15th day of November, 2000.