

Award No. 13684
Docket No. CL-15185

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE CINCINNATI UNION TERMINAL COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5676) that:

(1) Carrier violated the Rules of the current Clerks' Agreement by its action in dismissing Thomas P. Robinson from service on July 5, 1963, and

(2) That Thomas P. Robinson now be returned to service with all rights unimpaired and that he be compensated for all time lost.

OPINION OF BOARD: Claimant was dismissed from service on July 5, 1963, after having been tried and found guilty on a charge of assaulting his immediate Supervisor, an Assistant Foreman.

The Board finds no merit in the contention of the Employees that Claimant's procedural rights under the agreement were violated. The notice of the charge was sufficiently precise to apprise Claimant and his representative of the nature of the offense charged and it was timely served upon him. (See Award 11170). There is no evidence that the investigation was so conducted as to prejudice any of the Claimant's contractual rights. It was a fair and impartial trial as required by the rules. Nor may the Employees properly complain of the Carrier's review of Claimant's personal record in assessing the discipline to be imposed. Such consideration should always be given by a carrier in these discipline cases in order fairly to measure the degree of discipline to be administered.

Moreover, on the basis of the preponderance of the evidence in this record the Board finds no justification for setting aside or mitigating the discipline here imposed. That evidence establishes that Claimant attacked his Supervisor and inflicted upon him serious bodily injury. The alleged provocation for such attack, testified to have been the words and attitude of the Claimant's Supervisor, cannot be held to justify Claimant's resort to force and violence resulting in serious injury to a fellow employee. (Cf. Second Division Award 1659—Referee Carter).

In view of the foregoing, the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole

record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1965.