

Award No. 14391
Docket No. CL-15469

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5734) that:

1. Carrier violated the Clerks' Agreement when it suspended Clifford W. Jemming, Gerald E. Windisch and Robert A. Beskau, employees at the Jackson Street Store Department, St. Paul, Minnesota, from the service of the Carrier for five days, commencing Monday, July 13, 1964, to and including Friday, July 17, 1964.

2. Clifford W. Jemming, Gerald E. Windisch and Robert A. Beskau shall now be compensated for all wages lost during the five-day period.

3. Clifford W. Jemming, Gerald E. Windisch and Robert A. Beskau's records shall be cleared of all alleged charges or allegations which may have been recorded thereon as a result of the alleged violation named herein.

OPINION OF BOARD: Claimants, through the Organization, contend that the Agreement was violated when it suspended them each for 5 days. Two of the Claimants were suspended for absenting themselves without permission; and the third, in his capacity as gang leader, was suspended for failing to report the absence of the other two Claimants to the proper authorities.

Asset forth in the record, the Board is called upon to decide two questions:

1. Were Claimants denied a fair and impartial hearing by reason of the fact that Carrier witnesses were not excluded or sequestered from the hearing room during the investigation?
2. Was there sufficient evidence to support the charges against the Claimants?

With respect to the first question, we find that the exclusion of witnesses, in and of itself, did not result in an unfair or partial hearing. The majority rule in courts of law is that the exclusion of witnesses is not a matter of right but one of discretion with the person conducting the trial or hearing; and unless there is a valid basis for exclusion propounded at the time of hearing or trial, a motion or request for exclusion should be refused.

With respect to the second question, we are satisfied that there was sufficient and substantial evidence from the testimony and the related report incorporated in the record to support the charges, and we shall not interfere with the Carrier's action. As stated by this Board many times before, it is not our province to weigh conflicting evidence where there is valid and sufficient evidence to support Carrier's action. See Awards 10049 and 11968.

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

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1966.