

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19538
Docket Number CL-19800

I. M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7166) that:

1. Carrier abused sound discretion and acted in an arbitrary manner when it assessed the supreme penalty of dismissal of Mr. Tommy B. Lane, Messenger, Auditor of Disbursements, Roanoke, Virginia, after hearing held on March 11, 1971.
2. The discipline rendered in connection with this case was too severe with relation to the charges and the testimony developed in the investigation, as the purpose of discipline is not primarily punitive, but corrective.
3. Mr. Tommy B. Lane shall be restored to service with seniority and all other rights unimpaired.
4. Mr. Tommy B. Lane shall be compensated for all wage loss sustained by him until he is restored to service.

OPINION OF BOARD: Claimant was employed by Carrier on May 13, 1970 as a yard clerk and was transferred on October 20, 1970 to a position of messenger in the Carrier's Accounting Department in the General Office Building. On the afternoon of March 3, 1971, during working hours, a fight developed between Claimant and another employee in the basement of the General Office Building. Both employees were subsequently summoned to a formal investigation of the incident on March 11, 1971. Claimant was discharged on March 26, 1971, the other employee was not disciplined.

The sole issue in this case is whether or not the Carrier was arbitrary and capricious in assessing the discipline of dismissal. The record of the investigation is clear and unambiguous in that Claimant was responsible for provoking and engaging in a fight with another employee during working hours, on the premises, and in the presence of other employees. The record, including the investigative hearing, reveals no questions concerning the procedure; Claimant was afforded due process. The Carrier cannot and should not tolerate the conduct described above. This Board has held on a number of prior occasions that dismissal is an appropriate remedy in cases of employees fighting on duty (See Awards 11327, 13485, and 11170). We find that the discipline in this case was fully warranted and not too severe.

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 claim be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E A Tuller
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.