

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20246  
Docket Number MW-20355

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
that:

(1) The dismissal of Trackman R. W. Kelley on January 10, 1973 was without just and sufficient cause and wholly disproportionate to the offense with which charged (System File R. W. Kelley/12-39 (73-1)).

(2) Trackman R. W. Kelley be restored to service with seniority, vacation and all other rights unimpaired; his record be cleared of the charge; he be reimbursed for all wages lost.

OPINION OF BOARD: Claimant was dismissed from service on January 10, 1973 having been afforded an investigatory hearing and having been found guilty of assaulting his foreman.

Petitioner made no contention that any of Claimant's procedural rights were violated and predicated its case on the argument that the foreman was the aggressor. The transcript contains substantial and uncontroverted evidence that Claimant assaulted the Foreman after a running discussion, without heat, in which the Foreman refused to accede to a request by Claimant. Three witnesses and the Foreman all testified that Claimant struck the Foreman a few times without any provocation; Claimant testified that he indeed struck the Foreman first, but in self-defense since the Foreman had a knife in his hand.

The Board has held over a long period of time that it will not make credibility findings in disciplinary cases; the Carrier's judgment must be accepted when there are conflicts in testimony. In this dispute the preponderance of the testimony supports the Carrier's conclusions. Further, we see no reason to characterize the discipline imposed as being improper in any sense; the sanction of discharge for assault cannot be termed arbitrary or capricious.

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;

Award Number 20246  
Docket Number MW-20355

Page 2

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.