

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21104
Docket Number CL-20985

William M. Edgett, 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-7692) that:

1. Carrier violated the Agreement between the parties when on February 11, 1974, they arbitrarily and capriciously assessed Clerk N. M. Seohm fifteen (15) days actual suspension.

2. Carrier's action was unjust, unreasonable and an abuse of Carrier's discretion. The discipline was assessed without any proof whatever of the charges made.

3. Carrier shall now compensate N. M. Seohm for each day held out of service, with seniority and all other rights unimpaired.

OPINION OF BOARD: Claimant was suspended for a period of fifteen (15) days after hearing in which carrier determined that he had been engaged "in an altercation" which resulted in an injury to himself. There were no eye witnesses to the incident and both claimant and the employe who was allegedly responsible for claimant's injury testified that claimant was injured when a paperweight fell from a stack of papers when the other employe whirled around to answer the telephone which was ringing on his nearby desk.

Carrier theorized that the other employe threw the paperweight, which weighed one pound and was made of cast iron, a distance of approximately ten (10) feet, striking claimant in the head. It based that belief in large part on the testimony of another clerk who did not see, or hear, an altercation but who said that claimant pointed to the other employe who was alleged to have been involved when he asked what had occurred.

Carrier, despite the paucity of the evidence, decided that the paperweight was thrown, not accidentally dropped, as the employes testified. Even if that is true, the record is completely devoid of any evidence that claimant was anything other than an innocent victim. How he could be disciplined for being struck in the head, through no fault of his own, has not been explained to the Board. Based upon the record before it, the Board has concluded that Carrier acted without substantial evidence to support its findings. The claim is sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1976.