

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21226  
Docket Number CL-21245

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (

(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7848) that:

(1) Carrier unjustly dismissed from the service Mrs. Helen Wos, Overcharge Claims Clerk, Detroit, Michigan, and Miss Leona McMillian, Clerk, Detroit, Michigan, as a result of investigation held on July 30, 1974, in which the transcript failed to support the decision of the Carrier in sustaining the charges made against the Claimants in the caption of the investigation.

(2) Carrier shall return Mrs. Wos and Miss McMillian to service with all rights unimpaired, and compensate them for all wages lost account dismissal.

OPINION OF BOARD: On July 24, 1974 Claimants engaged in a verbal and physical altercation which resulted in their immediate suspension pending an investigation for conduct unbecoming an employe (i.e. inciting a fellow employe to fight, physical fighting, failure to obey orders of Supervisors, causing a disruption in the office, and use or threatened use of a weapon in fighting).

Subsequent to the investigation both employes were discharged for inciting a fellow employe to fight and physical fighting. It was also determined that Claimant McMillian, used, or threatened to use, a weapon.

Claimants have urged, as a basis for relief, the fact that the officer who issued the decisions to terminate was not the Officer who heard the case. Under certain records, such a showing might have a bearing on our review, however, we are of the view that said circumstance was not prejudicial to these Claimants.

Although we recognize a disparity in the testimony of the witnesses and Claimants, the record establishes the following basic sequence of events.

Claimant Wos' comment about Claimant McMillian's gum chewing triggered a verbal and physical dispute in the fourth floor ladies room (shouting, profanity, slapping, pushing, etc.). They continued the dispute in the hall at which point Claimant McMillian was physically restrained. Witnesses testify that they saw a weapon and heard McMillian shout "I'll kill you." and heard Ms. Wos' retort, "No you won't. Just try."

When Wos was ordered to leave the area, she went to a Supervisor's office on the third floor and was immediately followed by McMillian. They continued the verbal altercation and again it appears that some physical contact, -- such as slapping and poking, -- ensued.

Even leaving aside the question of whether a weapon, as such, was introduced into the conflict, we are inclined to find that Carrier's action was warranted. It has been long established that this Board should not substitute its judgement for the Carrier's in evaluating evidence if an appropriate basis for Carrier's conclusion is shown. Here there is substantial evidence to support the Carrier's version of the facts. In short, the criteria of Award 20993 has been met:

"The jurisdiction of this Board in discipline cases is well understood to be a threefold inquiry as to 1) Whether Claimant was afforded a fair and impartial investigation 2) Whether substantial record evidence supports the charge and 3) Whether the discipline imposed is, in all of the facts and circumstances of the case, so disproportionate to the offense as to be arbitrary, unreasonable or capricious. We have carefully reviewed the instant record in light of these standards."

We cannot state that the discipline imposed was disproportionate to the offense proved. In addition to showing the altercation, the record also shows that both Claimants were disinclined to allow the matter to drop. Our recent Award 21068 is, we feel, quite pertinent to this record:

"In every instance such as the one here under review, it is safe to say that one of the parties ignited the spark. But, it is equally safe to state that both parties had ample opportunity to restore a sense of propriety to the matter before it became totally uncontrollable."

Based on all the evidence presented we can not state that the disciplinary action imposed was either arbitrary or capricious.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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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. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1976.