

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21249
Docket Number MW-21329

Walter C. Wallace, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Terminal Railroad Association of St. Louis

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

(1) The suspension of ninety (90) days imposed upon Track Foreman Leonard Allen for allegedly "engaging in an altercation with TRRA Switchman E. Mock" was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (Carrier's File 013-293-13).

(2) The charge against Track Foreman Leonard Allen be stricken from his record and he be compensated for all monetary loss suffered, all in accordance with Rule 24(d).

OPINION OF BOARD: This claim arises out of an incident involving Switchman Mock and the Claimant Allen, a track foreman, wherein claimant was alleged to have engaged in an altercation with Mock without just and sufficient cause. The claimant, along with Switchman Mock was suspended from service pending a hearing which was held on June 28, 1974. As a consequence of such hearing both were held responsible for engaging in an altercation and each was suspended from service for ninety days. Mock had been charged also with violating Rule G but no finding had been made in that connection.

The facts involved here require analysis. Apparently Mock addressed some offensive remarks to claimant who was passing by. Claimant ignored the remarks and went about his business. Shortly thereafter he returned and inquired about the whereabouts of the man who made these remarks. Mock came out of the shanty and thereafter there is some conflict as to the facts. There is evidence that claimant addressed certain provocative remarks to Mock which, if stated, were calculated to gain a reaction. Claimant states he removed his jacket and radio and placed them aside while the two argued face to face. Thereafter, Mock drew a pocket knife and gave the appearance of threatening claimant with it. The latter wrapped his jacket around his arm and began swinging the radio as a means of defending himself. There is evidence that Mock had the odor of alcohol on his breath. The dispute was stopped before injury occurred.

It is the contention of the Brotherhood that claimant did no more than defend himself from a knife attack by someone under the influence of liquor. We do not agree. There is ample evidence here to justify the carrier's conclusion that claimant engaged in an altercation without just and sufficient cause. On their first encounter claimant did the right thing by ignoring the remarks of Mock. When claimant returned to seek out

Mock he demonstrated by thought, word and deed that he was ready for some physical resolution of their differences.

When asked his purpose in returning to the service building, claimant answered:

"I come back to the service building as I previously stated to find out who this person was and what was his problem and to let him know that I'm nobody to be playing with like that and talking to me in that manner like they're trash and I didn't appreciate that."

The testimony of Switchman Mooshegian clearly indicates that claimant made a provocative statement concerning Mock's wife which could be calculated as a challenge. Claimant's version of this statement is materially different. Going further, claimant's actions should be considered: he returned to the service building where he engaged in a face to face, name-calling session with Mock, then he removed his jacket and placed it aside along with his radio. All this tends to give credence to the view that claimant was engaging in an altercation with Mock. There was no finding of a violating of Rule G against Mock but there is evidence enough to indicate that alcohol was a factor in Mock's behavior. We fail to see how this helps claimant. In our view, it fortifies the belief that claimant acted properly on their first encounter by ignoring the remarks rather than seek him out and, in effect, challenge him as it appears he did in the second encounter. In any event, all of this occurred before Mock pulled out a knife and menaced claimant.

This Board cannot substitute its judgment for that of the carrier in discipline cases where there is substantial evidence that the offense charged was in fact committed. We conclude here that the carrier met this obligation in this case and its conclusions must stand.

It is claimed before the Board that the discipline imposed against the claimant was unjust and the claimant was denied a fair and impartial investigation insofar as the assessment of discipline against Mock failed to include a violation of Rule G. We are not persuaded that this was an omission, inadvertent or otherwise, and we must conclude that the alleged violation of Rule G was not substantiated. As a consequence both Mock and the claimant were guilty of the same offense and both received the same suspension, ninety days. We have no basis for overturning this discipline and the carrier's actions here were neither arbitrary, capricious nor unreasonable.

One final question relates to the exclusion of witnesses urged by Mr. Mock's representative. The witnesses referred to were members of Mr. Mock's crew and they were not witnesses to the altercation. It is

pointed out that claimant made no such objection at the hearing. We do not believe this exclusion prejudiced claimant and the omission of these witnesses is not a basis for setting aside this decision.

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

That the agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1976.