

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22209
Docket Number MW-22263

Nathan Lipson, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Consolidated Rail Corporation

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

(1) The dismissal of Mr. George Squires, an Engineer-Work Equipment, was without just and sufficient cause and wholly disproportionate to the offense with which charged (System Docket 315 Central Region-Pittsburgh Division Case MW 7/77).

(2) Claimant George Squires shall be restored to service with seniority, vacation and all other rights unimpaired and he shall be paid for all monetary losses suffered as a consequence of the aforesaid dismissal."

OPINION OF BOARD: This is a case involving the discipline administered to an Engineer-Work Equipment, based on a charge of violation of Carrier Rule E, when he struck a fellow employe on the head with a pick handle.

A trial was held on November 19, 1976, and Claimant was present and duly represented. Several witnesses testified to the incident in question, and their testimony was essentially corroborated by that of the Claimant wherein he states:

"... so I turned around and hit him. I swung again. I did not hit him the second time, then I threw the pick down and I was looking at him and I was scared and ran off the job"

Testimony of Witness Ancrile:

"... I was right next to him, about a foot and one-half behind him and Mr. Squires came up saying out loud, 'Try and take it off of me,' and proceeded to hit him in the head. After the first swing, he swung again. I tried to stop him and blocked it and it hit him in the shoulder the second time"

Testimony of Witness Elizeus (victim):

"Q. Mr. Elizeus, you are a trackman in District Gang #6. Would you please tell us what happened on September 23, 1976 at approximately 7:30 A.M.?

A. Well, the foreman, Jim Jones, told me to put the tools into the bus, so I put the tools in the bus and Mr. Squires had a pick handle, and I asked him for it, and he said, 'Wait I'll give it to you', so then he did not give it to me and I turned my back to him and started to walk towards the door of the bus and then I got hit with the pick handle and I was out and I do not remember what happened after that."

The testimony was convincing that Claimant was guilty of reprehensible conduct which cannot be tolerated in the railroad society. Under the circumstances, there is no basis for this Board to interfere in the discipline assessed and the claim will be 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;

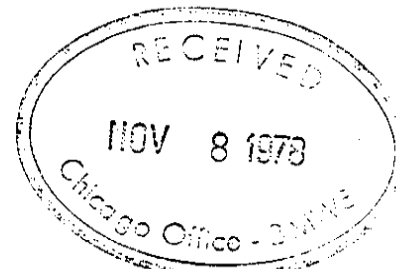
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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 31st day of October 1978.