

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22711
Docket Number MW-22658

John J. Mangan, Referee

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

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

(1) The suspension of Trackman B. F. Dunn was without just or
sufficient cause and on the basis of unproven and disproven charges
/System File C-4 (13) - BFD/12-39 (77-13) J/.

(2) The claimant's record shall be cleared of the charges and
he shall be compensated for all wage loss suffered as a consequence of
the aforesaid suspension."

OPINION OF BOARD: Claimant was assessed a thirty day suspension as a
result of his using "profane or abusive language"
and "uncivil conduct" toward his foreman on December 28, 1976.

The facts of record substantiate that Assistant Foreman Page
complained to Foreman Clark that Claimant and another employe were
responding to instructions issued in a slow and lackadaisical manner.
Foreman Clark called Claimant over to the pick-up truck, in which he was
sitting. While each party disputes the language used by the other, it
is clear that the conversation became animated and Claimant did reach
into the truck cab forcefully grabbing Foreman Clark, holding him for
some time.

Beyond these facts, the record contains much conflicting
testimony from all parties concerning the actions of the witnesses and
Claimant's perception of Foreman Clark's actions that motivated his
grabbing the Foreman.

Were it substantiated that Claimant's fear of bodily harm was
warranted rather than caused by suspicion and hearsay, there would be
reason to consider mitigation. However, the record before us does not
justify Claimant's action.

The principle that we may not substitute our judgment for that of the Carrier when there is conflicting testimony has been established for many years. Since the record contains adequate evidence to sustain the Carrier's action and the punishment was not excessive, 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 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

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 11th day of January 1980.