

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22731
Docket Number MW-22740

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(The Chesapeake and Ohio Railway Company

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

(1) The discipline of overhead suspension of five (5) working days and three (3) months' probationary period from August 26, 1977 assessed to James E. Wilkerson was without just or sufficient cause and on the basis of unproven charges (System File C(So)-D-512/MG-2027).

(2) The benefits and remedies prescribed in Agreement Rule 21(e) shall now be extended and applied to the claimant."

OPINION OF BOARD: The Claimant was notified to attend an investigation concerning an allegation that he had threatened a Line Gang Foreman.

Subsequent to the investigation, the Claimant was found to be at fault, and was assessed an overhead suspension of five (5) working days and three (3) months' probationary period.

There is evidence of record that when the Foreman was discussing the fact that certain ties were being put in "too tight", the Claimant uttered a profane comment and grabbed the Foreman by the collar and threatened, "I will beat your butt."

We have noted that the Claimant's version of the events vary from those described above, however as we have noted on numerous occasions, this Board does not resolve credibility determinations. Suffice it to say there is evidence of record of sufficient quantity to support the conclusion that this Claimant did, in fact, threaten the Foreman and, accordingly, we will deny the claim.

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 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 January 1980.

