

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23178  
Docket Number CL-23082

• John J. Mikrut, Jr., Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,  
                              { Freight Handlers, Express and Station Employees  
                              {  
                              { The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(CL-8843) that:

(a) The Carrier violated Rule 27 and others of the Clerks' Agreement when as a result of investigation they arbitrarily found Clerk Joseph Crawford at fault for an altercation that occurred on June 20, 1975 and did then assess discipline of thirty (30) days actual suspension.

(b) Claimant Crawford's record be made clear of discipline entry and that he be compensated for all wages lost as a result of the Carrier's arbitrary actions.

OPINION OF BOARD: On June 20, 1975, Claimant was assigned as an Operator on the 4:00 P.M. to Midnight shift at Carrier's Plymouth Yard Office, Plymouth, Michigan. At approximately 6:45 P.M. on said evening, Claimant was involved in an altercation with a co-worker, the Conductor of a 2:30 P.M. yard job, on Carrier property and while the two (2) men were still on duty. As a result of said altercation, pursuant to an investigation of the matter, the Conductor was dismissed from service and Claimant was issued a thirty (30) day suspension without pay for violation of Carrier Rules 801 and 802.

Organization contends that "(I)nasmuch as Claimant...was not specifically charged with violation of Rules 801 and 802,...Carrier erred in assessing discipline based on these rules." Further on this same point, Organization maintains that Carrier's "strict interpretation" of said rules precludes any defense whatsoever on the part of an employe when he is physically attacked by another employe. According to Organization, Carrier's position, "-- stand and accept punishment or else you shall be guilty of a rule violation -- is asinine and should not be tolerated."

In addition to the foregoing, Organization further argues that Claimant was not the initiator in this incident and, while he may have directed two (2) words of profanity toward the Conductor, such language was

nothing more than "shop talk," and was in reaction to the Conductor's initial verbal berating of the Claimant. Furthermore, Organization contends that, after Claimant was attacked by the Conductor, any physical actions which he (Claimant) may have engaged in were merely in reaction to Conductor's physical assault upon Claimant and were undertaken in "self-defense to forestall personal injury."

In summary of its position, Organization maintains that Claimant was "not at fault for the altercation" as charged by Carrier and, insofar as the Conductor was the initiator of the incident and Claimant's actions were merely in self-defense, the thirty (30) day suspension which has been assessed by Carrier was both arbitrary and capricious and was, therefore, improper in accordance with Rule 27.

Carrier's position in this instant dispute is predicated upon the following contentions:

1. Claimant used vulgar, profane and abusive language towards Conductor;
2. Claimant had an opportunity to avoid the confrontation, but elected to repeat his vulgar, profane and abusive remarks and proceeded from the rear of his desk towards (the) Conductor;
3. Claimant openly admitted his guilt in connection with the foregoing on numerous occasions in the record and the Petitioner never took exception throughout the handling of this case on the property to this basic fact;
4. The charges were specific. Claimant was found guilty as charged for his responsibility in being at fault for the altercation, discipline was properly assessed, and there was no violation of Rule 27(a);
5. The facts of record fully support the discipline assessed, which was extremely lenient in light of the seriousness of the incident, and the decision rendered was neither arbitrary nor capricious;

6. Awards of the Third Division, National Railroad Adjustment Board, fully supports the Carrier's position in this case (See: Awd. No. 19433, 19538, 20867, 21068, 21116, 21226 and 21299; also First Division Awd. No. 14690 and 19402; and Fourth Division Awd. No. 978).

The Board has carefully read and studied the voluminous record in this dispute and finds that the Organization's position must be rejected. The rationale for this determination is as follows:

First, the Organization's argument regarding Carrier's alleged error in assessing discipline based upon Rules 801 and 802 is without merit because: (1) the Statement of Charges clearly reflects that Claimant's conduct in relation to said Rules violation was the issue which was to be investigated at the June 25, 1975 hearing (Award 21068); (2) Claimant acknowledged at said hearing that he was "properly notified of these charges" (Tr. p. 2); and (3) Carrier's application of said rules does not restrict an employee's reaction in a physical attack to the rigidly passive manner such as Organization suggests, but does allow certain direct, defensive reactions, if justified and if in accord with commonly accepted principles which have been established for consideration in such situations.

Turning next to the merits portion of this dispute, despite the Organization's skillful attempts to minimize Claimant's role in the altercation on the evening of June 20, 1975, and despite the fact that the Conductor was the prime instigator of the incident itself, the record also shows that Claimant's actions clearly caused the incident, which began merely as an assault of words, to escalate into the physical altercation which resulted. In this regard, the record shows that after the Conductor had unleashed his verbal tirade upon Claimant, he had already turned around and was leaving Claimant's office when Claimant made his abusive remark to the Conductor. At that point, the Conductor turned around, walked back toward Claimant and asked, "What did you say, what did you call me?" In a most obliging manner, Claimant reiterated the remark and, thereupon, the two (2) men rushed at each other, and the ensuing brawl resulted.

Given the above set of facts, there is every indication that the physical altercation of June 20, 1975, would not have occurred had Claimant not made his abusive remark to the Conductor or had he not reiterated said remark when questioned by the Conductor. Thus, instead of attempting to diffuse an already highly volatile situation, Claimant's statements together with his obvious challenging deportment had an opposite effect in that they exacerbated the confrontation.

Referee Sickles, in previously cited Award 21068, in a case involving a fact situation which closely parallels that which is involved herein, addressed the issue of the "dual responsibility of participants in a physical altercation" and concluded as follows:

(W)ithout unduly burdening this document with a lengthy recitation of the pertinent evidence of record, we are inclined to find that the actions of both employees showed a willingness to engage in rather severe conduct which was clearly contrary to the best interests of their employer. 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 (Emphasis added by Board).

This Board finds that Referee Sickles' comments have particular relevance to this instant dispute, and for this reason this Board concludes that Claimant was guilty of the infraction as charged and that the penalty which was assessed was neither arbitrary nor capricious, and, therefore, shall remain undisturbed.

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: *A. W. Pauls*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February 1981.