

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23501  
Docket Number MW-23770

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(Chesapeake and Ohio Railway Company  
(Southern Region)

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

(1) The dismissal of Trackman Clarence Keathley for alleged assault was unwarranted, without just and sufficient cause and on the basis of unproven charges (System File C-D-880/MC-2685).

(2) Trackman Clarence Keathley shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: The claimant herein was a trackman with about two and one-half years of service with the Carrier at the time of the occurrence giving rise to the claim. On November 20, 1979, claimant was notified:

"Arrange to attend a hearing in the office of Manager-Engineering, 14501 West McNichols Road, Detroit, Michigan, at 1:00 P.M., Friday, December 14, 1979.

"You are charged with assaulting your acting foreman, at approximately 9:15 AM, Wednesday, November 28, 1979, in the Fullerton Section House, Detroit, Michigan.

"Arrange for representation and/or witnesses, if desired.

"Please acknowledge receipt of this letter."

The hearing was held as scheduled and a copy of the transcript has been made a part of the record. Claimant was present throughout the investigation and was represented. Claimant was notified on December 27, 1979, of his dismissal from the service.

We find that none of claimant's substantive procedural rights was violated in the charge, the investigation, or in the appeal on the property. While there were conflicts in the testimony at the investigation, it is well settled that this Board does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

We find that there was substantial evidence adduced at the investigation in support of the charge against the claimant. His dismissal from the service was not arbitrary, capricious or in bad faith. There is no proper basis for the Board to interfere with the discipline imposed.

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. Pauls*

Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.

