

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23825
Docket Number MW-23885

Paul C. Carter, 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 Repairman Helper Vincent P. McCauley was without just and sufficient cause and on the basis of unproven charges (System Docket 489).

(2) Repairman Helper Vincent P. McCauley shall be reinstated with seniority and all other rights unimpaired and be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant had been in Carrier's service as a repairman helper since November 21, 1977.

On May 20, 1979, at about 3:00 p.m., D. W. Haught, an employee who was reporting for duty on the second shift at the Canton Shops, Canton, Ohio, was injured by an object that was thrown and struck him on the forehead above the bridge of the nose. On June 12, 1979, Claimant was notified to report for trial on June 21, 1979, in connection with the following charges:

- "1. - Alleged violation of Safety rule 3007 'Personal conduct must be free from scuffling, practical jokes or horse-play while on duty or on company property.' at approximately 3:00 PM on May 29, 1979.
2. - Allegedly throwing a foreign object causing a personal injury to a second track employee at approximately 3:00 PM on May 29, 1979."

The trial was postponed until June 21, 1979. A copy of the transcript of the trial has been made a part of the record. Claimant was present throughout the trial and was represented. Following the trial, Claimant was dismissed from the service on July 9, 1979.

The Organization contends that the Carrier failed to meet the burden of proving the charges against the Claimant.

In the trial it developed that Haught, when struck, saw an object fall to the ground and identified it as between a 1/4 inch and 3/4 inch lock washer; that his driving partner, R. C. Draher, picked up the object; that the only personnel he saw in the area when the object hit his forehead, besides Draher, was Claimant McCauley; that McCauley was walking toward him, approximately twenty feet away; that he and the Claimant had a rather heated discussion,

in which considerable foul language was used; that the Claimant took no exception to the foul language, but said "I would get over it."

Draher, who was with Haught when struck by the object, testified that he saw Claimant throw something and hit Haught; that after the object hit Haught's head, it hit the shaping machine and fell to the ground; that he picked up the washer and gave it to supervision, and that no other employes were in the area except Haught and the Claimant.

In the opinion of the Board, there was sufficient evidence adduced at the investigation in support of the charge. The Board does not require that the proof be beyond a reasonable doubt, but only that substantial evidence in support of the charge be adduced. Furthermore, it is not the function of this Board to weigh evidence, attempt to resolve conflicts therein, or to pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

Based upon the entire record, we do not find Carrier's action in applying the discipline that it did to be arbitrary, capricious or in bad faith.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March 1982.