

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23873
Docket Number CL-23218

George E. Larney, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8912) that:

(a) Carrier violated Rule 27 and others of the Agreement when as a result of investigation held December 28, 1977 they arbitrarily assessed Mr. Willie B. Harris with thirty (30) days actual suspension.

(b) Carrier now be required to compensate Mr. Harris for all wages lost as a result of this suspension and that his record be made clear.

OPINION OF BOARD: Claimant, Willie B. Harris entered service of the Carrier on October 19, 1976, and was assigned a clerical position in the Transportation Department at Flint, Michigan. In a notice dated December 19, 1977, Claimant was directed to present himself before a Board of Inquiry on December 28, 1977, in connection with the following charges:

"(Claimant's) responsibility in connection with altercation with Assistant Trainmaster R. L. Homan, conduct unbecoming an employee and insubordination, which occurred at approximately 10:00 p.m., Thursday, December 8, 1977, during your tour of duty as Yard Clerk, Position C-48, McGrew Yard, Flint, Michigan."

In a written communication dated January 6, 1978, Claimant was advised by the Trainmaster he had been adjudged guilty as charged and accordingly a discipline of thirty (30) days actual suspension was imposed.

The record reflects that on the evening in question, December 8, 1977, Claimant and Clerk Paul Knox, a trainee at the time, were seated at two desks in an area outside the Lead Clerk's Office making out cards, when, at approximately 9:45 p.m., Assistant Trainmaster, R. L. Homan reminded the Claimant he needed him to check on cars in the yard, specifically the Fishers and top ends located at the north end of the tracks. According to Homan's testimony at the investigation this reminder was a follow-up to an earlier instruction he had given the Claimant at 8:30 p.m., that the yard needed to be checked by 10:15 p.m. At about 10:10 p.m., according to evidence of record, Homan again instructed Claimant to make a check of the tracks, directing him to cease what he was then doing. Homan testified Clerk Knox responded to this directive by rising from his chair only to be told by the Claimant to sit down,

that when he (the Claimant) was ready he would show him (Knox) what to do. Homan recounted he proceeded into the Lead Clerk's Office to seek additional information on the cars he was searching for and when he came back out he observed the Claimant and Knox still sitting at the desks. The record reflects that upset by Claimant's apparent disregard of his earlier directives to check the yard, Homan in a loud nearly screaming tone of voice instructed Claimant and Knox to "get up off (their) dead asses and to get the checks". At this juncture in the interchange, the principal participants each relate a different version of what then ensued.

Homan contends the Claimant jumped up out of his chair and put his bearded face right up against his face and said, "no one raises their voice to me", to which he (Homan) shoved the Claimant away from him with his right hand. Homan then maintains the Claimant came back at him like a "wild man" hitting him six (6) to seven (7) times in and around the head, face, chest, shoulder, and back and knocking his glasses off in the process. The altercation ended according to Homan when a third employe, Rick Gradowski entered the area and broke up the fight. As a result of this incident, Homan stated, he needed to be treated at the Industrial Medical Center. At the Medical Center it was determined Homan had suffered multiple contusions requiring him to return for a checkup three (3) days later.

Claimant relates that when Homan emerged from the Lead Clerk's Office he walked over to him and began yelling at him, "get off your dead ass, you've been sitting there all night, go out and get the checks." Claimant recounted that at first he thought Homan was joking but that as he started to get up out of his chair, Homan shoved him over the chair and in doing so he fell over the chair and over the top of the desk. Claimant contends that as he shoved Homan away, bumping himself and Homan against the wall, whereat Claimant maintains, the two of them continued tussling with each other. Claimant denies hitting Homan with a closed fist and asserts he would under no circumstances fight with a man of Homan's age.

The Organization argues that Homan and not the Claimant was the aggressor in this encounter and that whatever measures Claimant opted to employ can only be viewed as constituting those of self-defense. Thus, such actions by the Claimant cannot be construed as either conduct unbecoming an employe or insubordination. Carrier argues in the direct opposite, that Claimant and not Homan was the aggressor in the subject incident and that thirty (30) days actual suspension is realistically a quantum of discipline less than what is warranted by this very serious offense of a subordinate employee physically abusing a supervisor.

A close scrutiny of the entire record by this Board reveals Claimant was indeed insubordinate by his ignoring three separate instructions issued by his immediate Supervisor Homan, to make the yard check by a certain time. In addition, while Homan's conduct to wit, losing his temper, uttering an obscenity and yelling in the Claimant's face, is anything but exemplary behavior, still and all, this does not, in any way, grant license to Claimant to simply dispose of all restraint on his part and unleash a physical barrage on a man senior to himself in rank. Given the simple dictionary definition of an aggressor as "one who begins hostilities", certainly the preponderance of the

evidence supports the proposition Claimant was, in fact, the aggressor when he provoked Homan by not obeying his directives to make the checks and when additionally he countermanded Homan's directive to Clerk Trainee Knox. It is inescapable that great force was inflicted by the Claimant upon Homan simply by the fact Homan required medical treatment and that such treatment revealed Homan had sustained multiple contusions. The Board, upon reflection of all the evidence concludes Carrier succeeded in its burden of proof in demonstrating that Claimant was guilty of all the accusations set forth in the notice of charges. We also concur in the position of Carrier that the thirty (30) day actual suspension was a measure of discipline less severe than was warranted by Claimant's very serious offense in the instant case. In accordance with the foregoing rationale we find we must deny the subject 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 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

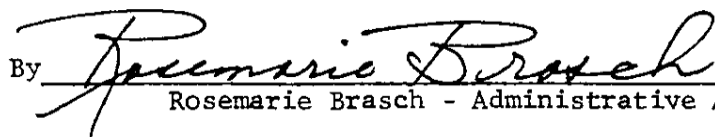
That the Agreement was not violated.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May, 1982.