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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24175
Docket Number MW-23493

Herbert Fishgold, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Seaboard Coast Line Railroad Company

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

(1) The discipline imposed upon Trackman E. A. McKenzie for alleged insubordination was arbitrary, capricious and on the basis of unproven and disproven charges (System File C-4(13)-EAM/12-39 (79-24) J).

(2) The claimant's record shall be cleared and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The claimant was working as a trackman assigned to Section 6765 headquartered at Winston, Florida, and was under the supervision of Foreman R. J. Tyson. At approximately 10:00 AM on November 21, 1978, Foreman Tyson instructed Claimant to "get two foot adzes and a pair of goggles off the truck." There followed a heated discussion between the two of them and, as a result, Claimant was charged with a violation of Rule 17, which prohibits profane, indecent or abusive language, and Rule 18, which prohibits various acts of disloyalty, dishonesty, desertion, intemperance, immorality, vicious and uncivil conduct, insubordination, etc.

The Claimant was removed from service on November 22, 1978 pending an investigation. As a result of the investigation and hearing, Claimant was notified on December 14, 1978 that Rule 17 was not substantiated, but that testimony indicated he was insubordinate towards his Foreman, in that he failed to immediately carry out his Foreman's instructions without verbal abuse. He was allowed to return to work on December 14, 1978, without any compensation for lost time between November 22 and December 13, 1978.

As noted, the charges stemmed from certain of Claimant's conduct on November 21, 1978, following Foreman Tyson's instruction to get two foot adzes from the truck. There was conflicting testimony as to what transpired, Claimant contending that he told his foreman that there was only one "foot adz" on the truck whereupon Tyson became angry. Tyson then told Claimant to walk down the tracks with him and became hotter and would not let up. Foreman Tyson testified that he asked Claimant to walk down the tracks because Claimant had previously indicated he did not want to discuss things of this nature in front of other employees on the gang. Tyson wanted Claimant to calm down and was going to tell him to go to another truck to borrow an additional adz, but Claimant continued "to fly off the handle."

Other individuals in the immediate area were unable to verify either version because they did not hear the discussion between Claimant and Tyson walking down the track. Although there is conflict in the testimony as to what actually occurred, it is clear that a personality clash existed between claimant and Tyson, and that Claimant felt that Tyson disliked him. In fact, on Claimant's return to work on December 14, he immediately transferred to another Section.

Once again, as in Award 22953 (Third Division, Referee Joseph Sickles), this Board, in a case between the same Organization and Carrier, is faced with a credibility conflict between a Foreman and an employee. As Referee Sickles noted in that case, wherein he upheld a 30-day suspension for a violation of Rule 18:

"As has often been repeated by this Board, it is not incumbent upon us to resolve credibility issues, inasmuch as we are not present at the hearing to observe the witnesses as testimony and evidence was presented.

We are of the view that there is a sufficiency of evidence concluded that the Claimant was an aggressor in this matter and, accordingly, we are disinclined to set aside the finding of guilt."

Turning to the disciplinary action herein, a 15-work day suspension, this Board, in Award 18550 (Third Division, Referee Robert O'Brien) noted:

"The policy of this Board involving disciplinary cases is so well established as to be uncontroverted. This Board will not weigh the evidence adduced at the hearing nor resolve conflicts therein. We will not disturb Carrier's decision where it is supported by substantive evidence and not arbitrary or capricious. Nor will we substitute our judgment for that of the Carrier unless the record discloses prejudice or bias." (Citations omitted).

Here, noting that the Claimant has previously been given two prior 60-day suspensions, this Board is of the opinion that nothing in the record presented suggests to us that the Carrier was arbitrary or capricious in assessing a 15-work day suspension in a situation such as this 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: Acting Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.