

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24211
Docket Number CL-24110

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
{ Union Pacific Railroad Company (Lines West)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9439)
that:

1. Claimant G. E. Porter was improperly dismissed from the service of the Union Pacific Railroad Company on November 26, 1979, following formal investigation and hearing at Portland (Albina) on November 9, 1979.

2. Carrier shall now be required to compensate Claimant for all time lost commencing November 26, 1979 and continuing until October 17, 1980 when he was reinstated to service without prejudice to Claimant's claim for all time lost.

OPINION OF BOARD: In this matter the Claimant was dismissed for allegedly engaging in an altercation with another employee. He was subsequently reinstated without prejudice to his claim for pay for time lost, which is the sole issue herein.

The Organization contends that the decision of guilt herein was based on conflicting testimony of the two principals to the altercation and furthermore the hearing officer was biased in his questioning of Claimant at the investigation. The Organization argues that the sum total of the investigation does not support the conclusion of guilt.

The crux of this matter is one of credibility. There is no question from the testimony at the investigation that an altercation took place and it is Claimant's conduct which is at issue. The Hearing Officer's conduct of the hearing was not protested during the handling of this dispute on the property and the record does not support Petitioner's position in any event. With respect to credibility, it is long and well established that Boards such as this cannot make such findings; it is solely the province of the Hearing Officer appointed by Carrier to make the credibility determinations.

Based on the reasoning above and the facts as determined by the Hearing Officer's credibility findings, there was substantial evidence adduced to support the finding of guilt. Claimant's own testimony supports that conclusion. A study of the entire record, therefore, leads to the conclusion that Claimant was properly found guilty of the charges against him. The discipline (as modified) in this dispute cannot be considered to be arbitrary or capricious and should not be disturbed.

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.

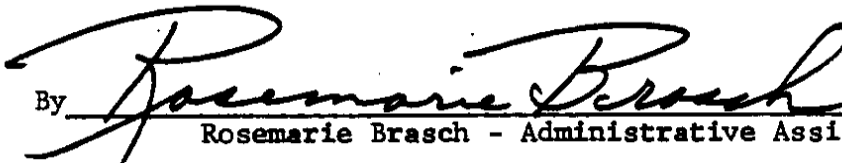
A W A R D

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 14th day of March 1983.

