

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24241
Docket Number MW-23834

Carlton R. Sickles, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employees
{ Missouri Pacific Railroad Company

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

(1) The discipline assessed Trackman Willie Brown was without just and sufficient cause and on the basis of unproven and disproven charges (System File S 247-5862).

(2) Trackman Willie Brown shall be compensated for all wage loss suffered, including holiday and overtime pay, during the period of his suspension (January 18, 1979 through April 16, 1979)."

OPINION OF BOARD: The issue is whether a disciplinary action involving a suspension for ninety days should be upheld. The action is based upon the alleged insubordination, including the threat of bodily harm, by the Claimant against his supervisor.

The Board finds that the alleged activity of the Claimant, if established, would support the findings of insubordination and justify a ninety-day suspension of the Claimant.

This Board is, therefore, once again being called upon to review the testimony in a disciplinary proceeding to determine whether there is sufficient basis for the Carrier to have concluded that the Claimant did perform the alleged activities and is, therefore, properly found guilty of the charges. There is conflicting evidence with two witnesses, including the original charging party, testifying to the activities of the Claimant and a number of witnesses disputing these facts.

The Board finds that there is sufficient testimony which, if believed by the Hearing Officer, establishes the charges against the Claimant. Once again, the Board is not in a position to evaluate the testimony when there is conflicting testimony because it is not in a position to be physically present in order to observe the demeanor of the parties and some way make an independent judgment as to the degree of probity of the witnesses interviewed at the hearing. Since the Board has concluded that there is sufficient testimony, if believed, to support the charges, the Board will uphold the decision of the Carrier and 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 14th day of March 1983.

