

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24276
Docket Number MS-24596

Paul C. Carter, Referee

PARTIES TO DISPUTE: {Herbert L. Murray
{Consolidated Rail Corporation

STATEMENT OF CLAIM: "I would like to serve notice, that I would like to appeal my dismissal from Conrail on Sept. 21, 1981.

I do not want the B.M.W.E. to represent me before the Railroad Adjustment Board or before a Public Law Board. I will personally handle any further proceedings or appeals."

OPINION OF BOARD: Claimant was employed as a Maintenance of Way truck driver. He was dismissed on September 18, 1981, after having been found guilty of the following offenses:

- "1. Insubordination wherein you did not perform service as instructed by Assistant Track Supervisor, L. R. Stillson, at approximately 1:30 PM on August 17, 1981, at Cadiz, Ohio.
2. Absent without permission from your assigned work location at Cadiz, Ohio from 1:30 PM to 3:30 PM on August 17, 1981.
3. Failure to protect your position at Cadiz, Ohio, from 1:30 PM to 3:30 PM on August 17, 1981.
4. Falsification of reporting your time on August 17, 1981.
5. Conduct unbecoming of an employee when you assaulted and threatened Track Supervisor, J. A. Madoni, at approximately 6:10 PM on August 17, at Uhrichsville, Ohio."

A transcript of the trial, or investigation, conducted on September 14, 1981, prior to Claimant's dismissal, has been made a part of the record.

The Claimant contends that the Agreement was violated by the Carrier preferring multiple charges in one notice. The Board finds no proper basis for such contention. All of the alleged offenses relate to one single occurrence. All concerned Claimant's alleged improper behavior and his failure to properly perform his duties on August 17, 1981.

A study of the transcript of the hearing, or trial, shows that it was conducted in a fair and impartial manner, and that substantive evidence was presented in support of the charges. While there were conflicts in some of the testimony, it is well settled that this Board will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the hearing officer.

In his submission to the Board, Claimant complains that Assistant Supervisor Stillson was not present at the hearing, and contends that he was deprived of his right of cross examining his accuser. The Carrier points out that during the course of the hearing the conducting officer stated that Mr. Stillson was too ill to attend the proceedings, and that his Supervisor, W. R. Little was available for questioning; that no objection was made at the time of Mr. Little's presence in lieu of Mr. Stillson, nor was a postponement requested so that Mr. Stillson would be available. It is well settled that if exceptions are to be taken as to the manner in which a hearing is conducted, such exceptions must be taken during the course of the hearing; otherwise they are deemed to be waived.

So far as offense No. 5 is concerned, there was substantial evidence presented at the hearing that Claimant did assault and threaten a Track Supervisor about 6:00 P.M., August 17, 1981, at Uhrichsville, Ohio. The Claimant points out that he was exonerated in court of assault charges arising out of this occurrence. The Board has frequently held that a Carrier's right to discipline an employe is unrelated to the actions of criminal or civil courts. In disciplinary proceedings strict rules of evidence do not apply and the burden of proof is not the same as in criminal or civil courts.

The record before the Board also shows that Claimant was previously dismissed from Carrier's service on June 30, 1977, for misuse of Company credit card in purchasing gasoline for his personal automobile, and was restored to service without pay for time lost by Award 45 of Public Law Board No. 2203, dated January 11, 1980.

Based on the record before the Board, there is no proper basis to disturb the discipline imposed by the Carrier.

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 Employes involved in this dispute are respectively Carrier and Employes 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

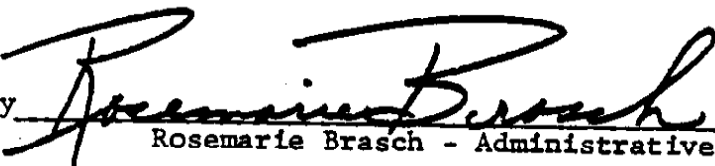
That the Agreement was not violated.

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 31st day of March 1983.