

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward M. Hogan, Referee

Award Number 24368  
Docket Number MW-24358

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes  
{ Burlington Northern Railroad Company (former St. Louis-  
{ San Francisco Railway Company)

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

(1) The dismissal of Machine Operator C. Bell for 'alleged violation of General Rule G, Rules 175, 176, and 18<sup>4</sup> of the Rules for the Maintenance of Way and Structures in that you allegedly entered into a boisterous altercation with Randy Hayter' was on the basis of unproven charges (System File B-1977).

(2) Machine Operator C. Bell shall now be allowed the benefits prescribed in Agreement Rule 91(b)(6)."

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier, prior to a formal investigation on the charges with violation of Rules G-175, 176 and 18<sup>4</sup> of the Carrier. The formal investigation was scheduled for August 12, 1980 at the request of the General Chairman. Claimant did not attend, but did receive proper notice.

The Organization contends that the charges were unproven at the hearing and that the Carrier is bound by the evidence as adduced at the investigation. The only evidence presented at the hearing as reflected on the transcript was the reading of the certified letter sent to the Claimant, the notation that he was not present, the inquiry of the General Chairman as to whether he was representing the Claimant, and the request of the Vice General Chairman of the possibility that the hearing be postponed.

Claimant had been summarily dismissed on July 18, 1980 following an incident involving the Claimant wielding a knife threatening his foreman and another employe, hitting another employe and throwing several rail anchors at the employe.

On November 18, 1980, the Carrier offered to re-open the investigation upon a previous request of the Organization. The Organization declined on December 9, 1980, responding that they felt the initial investigation, "... was sufficient".

The Carrier contends that the Organization is estopped from raising a claim based upon insufficiency of the record because the Organization itself stated that the record was sufficient.

We concur with the position of the Carrier. The facts of this case indicate that the hearing officer and the union representatives had driven over 400 miles to be present at the hearing at which the Claimant failed to appear. The Claimant failed to notify even his representative. The record indicates that the Vice General Chairman only sought the "possibility" of a re-opening of the hearing. We find that the subsequent acceptance of the offer by the Carrier to re-open the hearing estops the Organization from raising the issue at this level.

We further conclude that the measure of discipline in this matter fits the Rule violations. Assault and battery upon fellow employees and supervisors cannot be tolerated in this, or any, industry. As Second Division Award 1659 states:

"Discipline is necessary to obtain efficient and orderly conduct of railroad operations. It is necessary also to protect fellow employees and supervisory officers from physical violence by those who are disposed to settle their difficulties by such means." (Railway Express v. IAM, Referee Carter)

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  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May 1983.