NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 24673

THIRD DIVISION

Docket Number MW-24494

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Louisiana & Arkansas Railway Company

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

(1) The dismissal of Foreman C. E. Jaco and Laborer C. Perkins for alleged "responsibility in connection with the altercation that took place at 1:20 PM on October 22, 1980 at Mile Post 848.5" was excessive and unwarranted (Carrier's Files 013.31-243 and 013.31-244).

(2) The claimants shall be reinstated with seniority and all other rights unimpaired and they shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimants were dismissed from the service of the Carrier on December 23, 1980, following a formal investigation which was held on November 14, 1980 with respect to charges against the Claimant that they were involved in an altercation and further charges of violations of Rule "E" and Rule "N". The Organization contends that the Carrier failed to adduce evidence of a probative value to support the charges leveled against the Claimants. The Organization further contends that the Claimants' conduct, while not commendable, does not warrant the supreme penalty of dismissal from the Carrier's service. The Carrier argues that the review of the record clearly shows that there is more than enough probative evidence that Claimants participated in the altercation at issue and thereby violated Rules "E" and "N". The Carrier also argues that the discipline was fully warranted under the facts adduced at the formal investigation.

After our thorough review of the record, we cannot agree with either of the contentions of the Organization. First, it is a long standing principle of this Board that it will not substitute its judgement for that of the Carrier's. Rather, our task is to determine whether or not there is substantial evidence to sustain a finding of the hearing officer. We only overturn a finding by the Carrier if our review of the record indicates there has been arbitrary or capricious behavior on the part of the Carrier, or that hearing was patently unfair, or that the hearing officer has somehow abused the process in the exercise of his discretionar powers. We find nothing on the record to warrant our intrusion and overturning of the findings of the hearing officer in this claim.

We next address the issue as to whether or not the penalty imposed upon the Claimants was excessive and unwarranted. We cannot agree with the position of the Organization that the penalty assessed in this claim was excessive. It is clear that the Claimants were found guilty of a serious infraction of operating Rules. These rules are not only protections for the parties involved in this dispute, but also protections for other employees as well as the public and the efficient operation of the railroad. We cannot find that the measure of discipline assessed in this matter was excessive.

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: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 24th day of February, 1984