

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24813
Docket Number MW-24554

George V. Boyle, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Seaboard Coast Line Railroad Company

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

(1) Bridge Tender W. W. Farmer shall be paid for any wage loss suffered and for medical or any other miscellaneous expense he incurred, not covered by Traveler's Insurance Company or paid by the Carrier, because of his unjust treatment and harassment by certain Carrier Officers beginning May 29, 1980 [System File 37-SCL-80-137/12-39(81-1) G]/

OPINION OF BOARD: By letter of September 26, 1980 the General Chairman of the Brotherhood requested a hearing in behalf of the Claimant. The Claimant had alleged that his "absence from the service since May 29, 1980, was a direct result of cruel and unjust treatment by Foreman M.B. Waldron and especially Roadmaster A. M. Richards. On May 29, 1980 Mr. Farmer contacted this office on the verge of mental collapse and stated that his condition, which would require that he seek special medical treatment, resulted directly from the cruel and inhumane treatment he had been subjected to from the aforementioned recently and especially Assistant Roadmaster Richards who had come to his home cursed, abused and threatened him before his entire family and friends and intentionally intended to do him bodily harm when he ran over his foot with his pickup truck."

A hearing was held on the property, October 1, 1980. At that time the Claimant asserted that he had been treated unjustly and cruelly as evidenced by the following:

1.) "Mr. Medders questions Mr. Farmer.

Q. Now will you tell us exactly what you base these charges on of cruel and unjust treatment?

A. Well, I asked for permission take off from work because I was sick and at one point I had to come to the bridge and wait for Mr. Richards and Mr. Waldron to meet me there...

...I was under the impression that when you called in work sick that according to the rules if you brought in a note, your job was secure. I did not know I had to go down and sit at a bridge and wait to obtain permission to go and then told that as far as they are concerned, in their opinion I drink too much, which I do not even drink, and that's why my stomach was hurting, but under the rules they did allow me to go to the doctor. I went to get checked and it was brought to my attention that it was possible I have a bleeding ulcer and I was having a nervous condition..."

- 2) "I came to work at 2:00 o'clock and I told Pat Clements that I do not feel good that I was going to try to do my job anyway and I was sitting down there and in a little while I got very sick. I had some bad cramps in my stomach, and I was just about to unlock the bridge and I proceeded to call Mr. Waldron for permission to go home. Within a few hours he did come down to the bridge. I was just about in tears because I was in a great deal of pain and he said he would see what he could do and I never heard from him for the rest of the night. And when I called for permission the next day to go to the doctors, that's when they made me come to the bridge and wait for them. In other words, they were there when I got there."
- 3) "...On May 28th that's when he (Mr. Richards) come down to my house and he abused me knowing that I was very sick and I was having problems. When I had my neighbor call saying that I was going into the hospital on account of nervous condition, cause he asked her and she told him and I think it was in four hours later then he drove to my house and immediately upon seeing me, he just starting yelling, cursing - he called me a no good liar. My 5 year old girl was standing right beside me through this whole affair. My neighbors were out looking out the windows, standing outside"
- 4) "...the treatment I was receiving they would come down and hassle me and threaten, but I cannot prove these accusations, so I do not bring them up in their hearing. In other words, I was - the foreman told me he was gonna beat my face to the ground. He came down the bridge at 6 o'clock in the morning and threatened me, but I have no proof. I have no witnesses, I cannot bring it up..."
- 5) "Q. You refer to a good many times when people came down and harrassed you. Can you be a little more specific?
- A. When I first arrived at St. Lucie Canal Bridge, Mr. Waldron told me that I did not belong here. This town belongs to him. This was his town. Things were gonna be his way or they were not gonna be down as far as he was concerned. He was telling me that he was gonna run me off or beat my brains in whatever it took to get rid of me. When I first met Mr. Richards, the first thing he told me was -- I'm here now, you can call the Union and turn me in, because I'm not gonna be here that long and they just kept coming down, riding around the bridge. Mr. Waldron told me he could tell me how many times I used the bathroom. He has people watching the bridge, but like I say, I have only my word against his, and I don't think that will withstand in this hearing."

- 6.) "...I was standing there and he (Mr. Richards) was yelling different things that I don't remember exactly to the words, but on several occasions he got out of the truck and started swinging at my face with his hands to provoke me into a fight. I - one occasion he turned around and took the mike from the CB recorder inside and was throwing it in my face holding the cord saying "call the union", "call the union" because he didn't care. He said there was nothing I could do to him. "Call the union." And there was some more yelling going on and then he proceeded to leave and when he was backing out, there was lady walking behind the truck. I said, Mr. Richards, - I said, be careful, there's a lady behind the truck. He stopped the truck and he said "don't be telling me what to do". And I was still standing beside the truck and when he proceeded to leave again, his left tire ran up on my foot, and I told him - I said, hey your truck's on my foot. He leaned out of the window, he looked at me and he said, 'good' and he proceeded to spin off and just leave."

The Board feels it necessary to quote these accusations verbatim and at length because it believes it is essential to document both the content and the flavor of this testimony.

The Carrier's evidence, in denying these charges, was in testimony to the following effect:

1) The Claimant from the beginning of his assignment had resisted authority and legitimate orders by the following actions:

- a) When told he would need to get a watch he refused and only procured one after a formal letter was written to him ordering him to do so. (Minor Testimony Page 24).
- b) He refused to share the duties of greasing the bridge and cutting the grass as a requirement of his job (Farmer Testimony page 14 and 15; Minor Testimony page 24 and 25; Waldron Testimony page 41; Clements Testimony page 46; Cobb Testimony page 51 and 52).
- c) He refused to take a required examination on the rules (Minor Testimony page 25).

2) He had personal, domestic problems which caused him anxiety. These he freely discussed with his co-workers but never complained to them of any harrassment or mistreatment on the job (Cobb Testimony page 50 and 52; Clements Testimony page 47).

3) With regard to the injured foot, two doctors examined the Claimant's foot and found "no tenderness, no ecchymosis, no deformity, no swelling of any type noted"... "no physical evidence of injury."

4) Both Carrier representatives Waldron and Richards denied the charges and no other witness was aware of any "cruel and unjust" treatment by them of the Claimant.

5) On May 28th the Claimant's neighbor called at 2:17 P.M. to report-off the Claimant who was scheduled to work the 2:00 to 10:00 P.M. shift. This prompted Assistant Roadmaster Richards to go to the Claimant's residence in a trailer park for the purpose of ascertaining when the Claimant could return to duty. He had been given the impression that the Claimant was entering a medical facility for treatment immediately. His language, which he admitted was colorful and angry, he testified, was in response to the Claimant's similarly abusive and colorful tirade.

Richards denied running over the Claimant's foot and indicated that he did not try to provoke an incident but was on the receiving end of provocation.

While Farmer introduced testimony from his neighbor to substantiate his version of the incident she testified.

"Q. Did you hear Mr. Richards cursing Mr. Farmer?

A. There were no curse words not that I can remember.

Q. Did you hear Mr. Farmer curse Mr. Richards?

A. No sir.

Q. Did you see Mr. Farmer maybe shake his finger in Mr. Richards face?

A. No sir.

Q. Then you did not see Mr. Richards move Mr. Farmer's finger and hand out of his face?

A. No sir."

Since this version is at variance with that of both the Claimant and the Assistant Roadmaster her testimony must be regarded as suspect and unreliable.

6) The Claimant himself admitted that his foot was not injured after alleging that he had to be helped into the house.

7) The Claimant was under medical treatment for his physical and mental condition before the May 28th incident as evidence by a medical certificate dated May 16th, 1980.

From the above, in this copious and complex account, the Board concludes that the Claimant has not sustained his burden of proof in substantiating his allegations. The Claimant's medical condition was not the result of any employment related situation nor the outcome of any actions on the part of the Carrier's representatives. The record shows no undue or extraordinary pressure generated by the job or supervision which would warrant a finding of causality. None of the seven (7) Carrier witnesses at the hearing testified to any unjust treatment or

harrassment. The accusations of the Claimant were unsubstantiated, except by his neighbor and friend who was a bystander to the incident of May 28th. Her testimony was in conflict on several points with the Claimant's as well as Mr. Richards and thus must be reconciled or discounted as such by the hearing officer, not the Board.

Since the Claimant was the initiator of the charges he bears the responsibility for substantiating them. This he failed to do and so the claim is denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

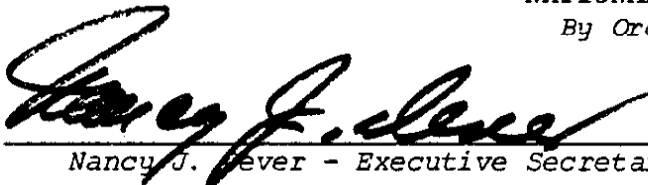
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois this 16th day of May, 1984