

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24824
Docket Number MW-24468

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(New Orleans Public Belt Railroad

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

(1) The dismissal of Bridge Patrolman J. A. Stanich for alleged responsibility for damage to Motor Car No. 38 on November 2, 1980 was capricious, arbitrary, unwarranted and on the basis of unproven charges.

(2) The claimant shall be reinstated with seniority, vacation and all other rights unimpaired, his record cleared, and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier on November 7, 1980. A hearing was requested and held on December 9, 1980. Claimant was notified on December 26, 1980, that the prior dismissal had been sustained by the hearing officer. The Carrier's action and the Claimant's dismissal stems from the Claimant's alleged responsibility for damage to Motor Car #38 of the Carrier.

The Organization contends that the action of the Carrier was arbitrary, capricious and unwarranted, and further that the evidence did not support the charges made against the Claimant. The Organization further contends that this Board is restricted to a review of the record as adduced at the formal investigation only, and that therefore, the evidence before it should demonstrate that the Carrier has failed to prove its charges (citing First Division Award 19394; Second Division Award 2293, 2371; Third Division Awards 3322, 3342, and 6062). Lastly, the Organization contends that the discipline imposed was excessive, and therefore it cannot stand (citing Third Division Awards 2813, 6074, 10582, 11556, 14120, 14339, 14479 and 16166).

The position of the Carrier is that the evidence as adduced at the formal investigation fully warranted the action taken by the Carrier, and that further long-standing precedent of this Board requires that this Board will not substitute its judgment for that of the hearing officer, nor should this Board interject its opinion with respect to credibility determinations resulting from conflicting testimony at the formal investigation. The Carrier further argues that the evidence as adduced at the formal investigation, clearly supports its position in determining responsibility, and that circumstantial evidence as introduced by the Carrier's witnesses was properly evaluated by the hearing officer.

We believe that this Board has clearly stated in Award No. 12491 (Referee Ives) the proper rule to be utilized in evaluating circumstantial evidence.

"The mere fact that the evidence is circumstantial makes it no less convincing that the Board cannot say as a matter of law that the Carrier was not justified in reaching its conclusion following the

The Organization is requesting this Board to substitute its judgment for that of the hearing officer. It is a long standing policy and practice of this Division and other Divisions of the National Railroad Adjustment Board that we will not substitute our judgment for that of the hearing officer, absent evidence of arbitrary or capricious conduct of the hearing officer or a clear abuse of managerial discretion. Further, precedent of this Board holds that this Board is not a trier of fact, nor can we resolve patently conflicting testimony. (See Third Division Awards 9230, 9322, 10113, 10791, 16281, 21238, 21612, 21442, 22711, and 22953.). Accordingly the claim must be denied.

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:


Nancy J. Fever - Executive Secretary

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