

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25020  
Docket Number MW-24920

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(Consolidated Rail Corporation (former Penn Central  
(Transportation Company)

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

(1) The dismissal of Trackman J. R. Farrabee for alleged 'Attempted falsification of personal injury allegedly sustained at Loudonville, Ohio on August 17, 1979 at approximately 1:00 PM' was without just and sufficient cause and on the basis of unproven charges (System Docket 556).

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

OPINION OF BOARD: The Claimant attended a trial held on January 17, 1980, on charges that he "attempted falsification of personal injury allegedly sustained at Loudonville, Ohio, on August 17, 1979 at approximately 1:00 p.m." Following the investigation, the Claimant was notified that he had been found guilty of the charges and was dismissed from the Carrier's service.

The Organization essentially advances a basic contention, and provides numerous well-stated examples and citations in oral arguments before us and in the record in support thereof, that the Carrier did not meet its heavy burden of proof required of a dismissal action.

Key to the Carrier's finding of guilt is the construction it places upon testimony adduced at the hearing. It essentially concluded from this record that the Claimant had not been injured, as he claimed. The Board recognizes the divergence of opinion and conflict concerning portions of the testimony of record. However, there is no basis for holding that the Carrier abused its discretion when it chose to believe whom it did. There is no basis herein to disturb the well-established principle that it is the Carrier's role to determine the credibility of witnesses. Accordingly, 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 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.