

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26045
Docket Number MW-25786

John B. LaRocco, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way Employees
(Consolidated Rail Corporation

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

1. The discipline imposed upon 'B' Foreman I. Jones for alleged 'Conduct unbecoming of an employee' on June 16, 1982 was without just and sufficient cause (System Docket CR-65-D).

2. The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: At approximately 3 A.M. on June 16, 1982, Mr. Lovins, a member a Rail Gang 301 at Hilliard Yard, allegedly attacked Claimant with a blunt instrument and a knife while Claimant was asleep in the bunk car. Claimant, a "B" class Foreman, suffered minor lacerations. Unfortunately, Claimant did not report the assault to either his Superiors or Law Enforcement authorities.

At approximately 5:00 P.M. on the same day, the Rail Gang Engineer observed Claimant chasing Mr. Lovins on company property. Claimant hit Mr. Lovins with a spike maul handle. Next, Claimant threw stones at the fleeing Mr. Lovins, Claimant missed the target.

The Carrier withheld Claimant from service pending an Investigation which was duly held on July 20, 1982. At the Hearing, Claimant identified Mr. Lovins as his assailant. He related that Mr. Lovins threatened his life at about 5:00 P.M. To protect himself, Claimant procured the spike maul handle. Claimant frankly admitted that he chased and struck Mr. Lovins. Moreover, Claimant emphasized that he would do it again.

The Carrier reinstated Claimant to service on August 16, 1982. The Carrier imposed a suspension on Claimant measured by the time he spent out of service for conduct unbecoming an employee while on company property.

Claimant's primary contention was that he acted in self-defense. He physically battered Mr. Lovins because he feared Mr. Lovins would carry out his death threat. However, the sequence of events conclusively demonstrates that Claimant improperly resorted to self-help to retaliate for the nighttime attack. Claimant hit Mr. Lovins more than twelve hours after Mr. Lovins had assaulted him. The imminent danger of bodily harm had long since passed.

Even though Mr. Lovins verbally threatened Claimant at 5:00 P.M., Claimant clearly assumed the role of the aggressor. At the moment Claimant struck him, Mr. Lovins was obviously retreating and posed no real threat to Claimant.

Although Mr. Lovins was the original instigator, Claimant had no right to engage in reprisals or self-help. By taking matters into his own hands, Claimant added more danger to an already tense situation.

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

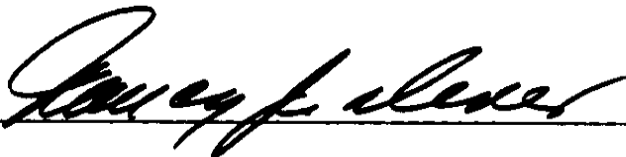
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of June 1986.