

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26067
Docket Number CL-26168

Peter R. Meyers, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9972) that:

(a) Carrier violated the Agreement at Topeka, Kansas, when it removed Mr. N. W. Phillips from its service, and

(b) Carrier shall now return Mr. N. W. Phillips to its service, with all rights unimpaired and with pay for all time lost, at the regular rate of his position from July 1, 1983, forward".

OPINION OF BOARD: Claimant was employed by the Carrier with a seniority date of September 10, 1965, at the time of the instant dispute, was regularly assigned to Trucker Position 6152, Purchases and Materials Department, Topeka, Kansas.

On July 1, 1983, Claimant and Carrier's Sectional Storekeeper became involved in an altercation, during which Claimant allegedly pulled a knife from his pocket and threatened to use it. Claimant received a formal Notice of Investigation the same day, charging him with violations of General Rules 2, 16, and 17. These Rules provide:

"Rule 2: Employees must be conversant with and obey the Company's rules and special instructions. If an employee is in doubt, or does not know the meaning of any rule or instruction, he should promptly ask his Supervisor for an explanation. A copy of Form 2626 Std. is furnished each employee to be retained by him for his guidance.

Rule 16: Employees must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury.

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will not

bring discredit on their fellow employees or subject the company to criticism or loss of goodwill.

Rule 17: Employees must not enter into altercations, play practical jokes, scuffle, or wrestle on company property.

Employees must devote themselves exclusively to their duties during their tour of duty.

Gambling, playing games, reading newspapers, books or use of a television while on duty is prohibited."

After a postponement, the Investigation was held on August 30, 1984. As a result of the Hearing, Claimant was dismissed from service. The Organization then filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed all of the evidence and testimony in this case, and we hereby find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the Rule violation with which he was charged. The Carrier presented a credible witness who testified that the Claimant became upset after receiving an order from his Supervisor and pulled a knife out of his pocket, opened it, and threatened to use it. Moreover, the Carrier presented evidence of insubordination and other Rule violations on the part of the Claimant on that same occasion. Although there is a credibility question, the Claimant states that the item that he pulled from his pocket was a fingernail clipper and not a knife; it is fundamental that this Board does not decide questions of credibility and will not substitute its judgment for that of the Hearing Officer. See Third Division Awards 25102 and 24991.

With respect to the procedural claims made by the Organization, this Board finds that the Hearing was held properly and that the Claimant was guaranteed all of his procedural rights.

Once this Board determines that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The record indicates that in 1982, the Claimant was terminated from employment but was reinstated on a leniency basis after an almost six-months suspension. The incident in question took place only seven months after his reinstatement on that leniency basis. With that record, we find that the Carrier's action in terminating the Claimant was not unreasonable, arbitrary, or capricious, and this Board will not set it aside.

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 8th day of July 1986.