

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26083
Docket Number MW-25908

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (AMTRAK)
(Northeast Corridor)

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

1. The ninety (90) days of suspension imposed upon Trackman T. Bruce for alleged violation of Rule 'J' was without just and sufficient cause (System File NEC-BMWE-SD-549D).

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: An Investigation was held on November 23, 1982, to determine whether Claimant violated Rule J of Amtrak's General Rules, when he allegedly used vulgar language and threatened and interfered with Foreman Chris Sheppard on October 14, 1982. The asserted misbehavior occurred while both individuals and others were riding a company bus from Union to Midway, New Jersey. Rule J reads:

"Courteous conduct is required of all employees in their dealing with the public, their subordinates and each other. Boisterous, profane or vulgar language is forbidden. Violence, fighting, horse-play, threatening or interfering with other employees or while on duty is prohibited."

Based on the Investigative record, Claimant was found guilty of violating this Rule and assessed a suspension of ninety (90) days, which effectively ran from October 15, 1982 through January 13, 1983. The suspension retroactively included the time he was held out of service beginning on October 15, 1982. This disposition was contested and appealed in accordance with the applicable grievance procedures of the Controlling Agreement.

In defense of its petition, the Organization raises both procedural and substantive concerns. Procedurally, it argues that since the Trial Officer took statements from one or more Carrier witnesses during the pre-trial Investigation, he should have been effectively precluded from conducting the formal Investigation on November 23, 1982. It also avers that Carrier should have called as witnesses other employees on the bus who saw the incident.

On substantive grounds, it asserts that the language used by Mr. Bruce in his discussion with Foreman Sheppard was shop talk in nature and consistent with normative on-situs standards of language usage. It maintains that there is no specific evidence showing unmistakably that Mr. Bruce used physical action against Foreman Sheppard, but instead argues that Mr. Bruce used his finger to gain Mr. Sheppard's attention. Claimant's position on this point is referenced as follows:

"While riding on the bus returning to our headquarters in Colonia on October 14, 1982 at approximately 4:00 p.m., I approached Mr. Sheppard, Track Foreman, and inquired about qualifying for an AMT-2 test. Mr. Chris Sheppard replied, 'Why do you want to take the AMT-2 test?' I advised Mr. Chris Sheppard that I need to be qualified under the wires of AMT-2. I informed Mr. Chris Sheppard that I asked him three or four weeks ago about taking the AMT-2 test, and that I felt he was being biased towards me, and that other trackmen with less seniority have been sent to AMT-1 and AMT-2. At that time Mr. Chris Sheppard shoved me and Mike Chiavarone stepped in between us. Thereafter, abusive language was used by Mr. Chris Sheppard and myself."

Carrier contends that the Investigative record fully establishes that Claimant initiated and engaged in a course of conduct that was clearly violative of Rule J. In particular, it asserts that Mr. Sheppard's version of events is supported by the testimony of two eyewitnesses who stated that Mr. Bruce was quarrelsome and abusive. It disputes the Organization's contention that Mr. Bruce's actions were only meant to gain Mr. Sheppard's attention, arguing instead, that the eyewitnesses' testimony showed that Mr. Bruce made physical contact with Mr. Sheppard and threatened him.

Moreover, it asserts that its Trial Officer conducted the Investigation pursuant to acceptable due process standards, since Claimant was afforded every opportunity present a thoughtful defense. It observes that it is the Organization's responsibility to call partisan witnesses and notes, in this connection, that the Organization had never requested a postponement of the Trial to secure witnesses.

In considering this case, the Board concurs with Carrier's position on both the procedural and substantive issues raised. Procedurally, we find that Carrier conducted the Investigation in a manner that was consistent with due process standards and find that Claimant was properly accorded his day in court. The October 20, 1982, Notice of Investigation availed him of the opportunity to present partisan witnesses, but he did not exercise this prerogative. Further, we find no prejudicial impact resulting from the Trial Officer's pre-trial actions when said Official witnessed statements that were later entered into the record. There were no judgmental considerations attached to these perfunctory actions.

Similarly, with respect to the substantive charges, we find that the record clearly establishes Claimant's misconduct. It might well be that Claimant was generally concerned with the status of his request to take the AMT-2 test, but his course of conduct on the bus was not indicative of a routine follow-up inquiry. Instead, it reflected a sustained pattern of purposeful vituperation. The testimony of both eyewitnesses, despite minimal variation, unequivocally showed that Mr. Bruce used vulgar language and threatened Mr. Sheppard. Perhaps Foreman Sheppard's prior action in handling Mr. Bruce's request to take the AMT-2 test was questionable, at least from Mr. Bruce's perspective, but it did not warrant the subsequent conduct manifested on the bus. Mr. Bruce was in the wrong on October 14, 1982, and his sum total deportment violated Rule J. Accordingly, we will deny the Claim.

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 Employee involved in this dispute are respectively Carrier and Employee 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

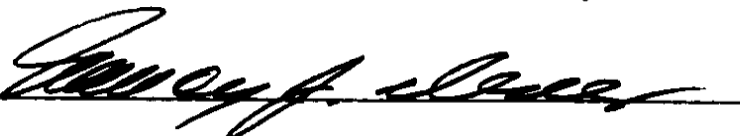
That the Agreement was not violated.

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 31st day of July 1986.