

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26323
Docket Number MW-26186

Martin F. Scheinman, 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 discipline assessed Trackman W. R. Anderson for alleged violation of NRPC Rules of Conduct, General Rules 'I' and 'J' was without just and sufficient cause (System File NEC-BMWE-SD-694D).

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

OPINION OF BOARD: At the time this dispute arose, Claimant was employed as a Trackman, with five years' seniority. By letter dated July 26, 1983, Claimant was ordered to appear for a Trial in connection with his alleged violation of Rules I and J in that

"... on July 20, 1983, at approximately 1:30 a.m. in the vicinity of John Street and North Avenue, you were insubordinate, quarrelsome and vicious with Trevor Patience when you allegedly assaulted General Foreman Patience causing him injury."

The Hearing was held on August 23, 1983 at 3:30 P.M. Subsequently, Carrier found Claimant guilty as charged and reduced the penalty from dismissal to a 90 day actual suspension. The Organization timely appealed Carrier's decision. Upon the parties' failure to resolve the dispute on the property, it was advanced to this Board for adjudication.

The Organization asserts that Carrier failed to substantiate the occurrence of an assault. In its view, Carrier's only evidence consists of hearsay statements or documents which should be given little or no weight.

In the Organization's view, Claimant was simply defending himself when he struck the General Foreman. As Claimant testified, he hit the General Foreman after the latter "hit me across the back with a pipe and again with it across my back and across my head and up in my shoulders." In fact, it notes, Claimant received medical attention at St. Joseph's Hospital.

Thus, the Organization submits that Carrier has not met its burden of establishing that Claimant provoked an altercation. Accordingly, it asks that the Claim be sustained and that Claimant be made whole for his suspension.

Carrier, however, argues that Claimant was properly disciplined. It asserts that its Hearing Officer properly credited the testimony of the General Foreman. He stated that after a verbal dispute, "Claimant struck me with an air canister on the left side of my head ... and he struck me five (5) more times." As such, Carrier contends that it was justified in suspending Claimant 90 days for this assault. Therefore, it asks that the Claim be rejected.

A review of the record convinces us that the Claim must fail. Carrier chose to credit the testimony of the General Foreman over that of Claimant. Absent a showing of bad faith, credibility determinations by Carrier may not be overturned by this Board. No such showing exists here.

As noted above, the General Foreman testified that Claimant was the aggressor. While the two were engaged in a verbal dispute, Claimant struck the first blows. As such, Carrier properly found him guilty of assaulting the General Foreman.

An assault upon another employee is a serious offense. It is severely disruptive. It has no place at the work site. Given these facts, we are convinced, a 90 day suspension was justified.

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. Leever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1987.