

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: ( (Brotherhood of Maintenance of Way Employees  
(The Kansas City Southern Railway Company

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

(1) The sixty (60) days of suspension imposed upon Laborer S. D. Roberson for responsibility 'in connection with an altercation that occurred between you and Mr. K. A. Nichols on December 28, 1983', was without just and sufficient cause and on the basis of unproven charges (System File 49-164).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Based on an incident occurring at 7:45 a.m. on December 21, 1983, the Claimant was withheld from service and made subject to an investigative hearing to determine his responsibility in an "altercation" between the Claimant and another employee.

After both the Claimant and the other employee left the bus bringing them to their work place, the record leaves no doubt that the Claimant approached the other employee, striking him in the face and causing his nose to bleed. The record further shows, with somewhat less precision, that there was an interchange between the two employees while they had been traveling together with others on the bus. The other employee either shoved and/or slapped the Claimant during the course of an apparently hostile discussion while on the bus.

The other employee was not withheld from service at the time and, as a result of the investigative hearing, was assessed a disciplinary suspension of 15 days. The Claimant was assessed a disciplinary penalty of 60 days, which happened to coincide with the length of time he had been held out of service.

While not condoning the action of either employee, the Organization argues that the Claimant was subject to unfair treatment in that his disciplinary penalty was more severe than that for the other employee. The Board finds, however, that the difference in penalty was warranted. Whatever had occurred on the bus, it remains the fact that the Claimant -- after an interval -- deliberately approached the other employee and struck him, apparently without further conversation. This demonstrated that he was a proven aggressor, at least in this phase of the interchange between the two employees. The Carrier exercised its right to determine appropriate penalties, based on the hearing record, and the Board has no reason to question the Carrier's action.

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 25th day of February 1988.