

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Northeast Illinois Regional Commuter Railroad Corporation
(former Chicago, Rock Island & Pacific Railroad Company)

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

(1) The dismissal of Track Laborer W. B. Murray for alleged '... insubordination and altercation ... violation of Rules "B" and "N"' was arbitrary, without just and sufficient cause and on the basis of unproven charges (System File NIRCRC-D-1197/08-13-58).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his 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 employee 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.

Claimant was employed as Trackman on a gang working on the main line near 33rd Street, Chicago, Illinois, on July 16, 1985. In addition to Claimant there were three other Trackmen working under the supervision of Foreman Jachma. As a result of an incident between Claimant and the Foreman, Claimant was charged with insubordination and discharged following investigation.

At the formal investigation, the Foreman and the other three Trackmen who witnessed the incident testified that Claimant knocked the head off of his pick-axe and chased the Foreman with his pick handle raised in a threatening gesture. That testimony was consistent with written statements given to police officers by these witnesses within a few moments of the incident. According to the Foreman, Claimant attacked him in this fashion after the Foreman ordered Claimant for the fourth time to stop gold-bricking and get to work with the other employees.

Claimant denied the pick-axe incident and testified that the Foreman verbally provoked him with harassing and ethnic remarks while he was trying to rest his back from an on-the-job injury. After reviewing the evidence, Carrier apparently elected to believe the testimony of the three employee witnesses and the Foreman while rejecting Claimant's story.


We cannot find that Carrier lacked substantial record evidence to support its decision of Claimant's guilt; nor do we find that the penalty imposed was unreasonably harsh in the circumstances.

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 30th day of August 1988.