

The Third Division consisted of the regular members and in addition Referee W. F. Euker when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Belt Railway Company of Chicago

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

(1) The dismissal of Track Laborer C. Cislo for alleged violation of Rules H, J, M and U was arbitrary, capricious, exceedingly harsh and an abuse of the Carrier's discretion (Carrier's File P/R C. Cislo).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record shall be cleared of all 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 were given due notice of hearing thereon.

Claimant was a Track Laborer assigned to Extra Gang No. 2, on April 1, 1986, installing switch ties in the vicinity of Cicero Avenue Bridge when he was involved in an altercation with a fellow employee at approximately 2:50 PM, which resulted in Claimant sustaining personal injuries. In a letter dated April 2, 1986, Claimant was notified he was dismissed from the service for violating certain identified Carrier Safety Rules. As provided in the Agreement, the Organization requested an Investigation which was held on April 9, 1986, following which the Claimant's dismissal was reaffirmed. As a matter of record, the employee who was implicated in the altercation with Claimant was also dismissed, but was subsequently returned to service on June 17, 1986, on a leniency basis. Carrier refused to grant the same consideration to Claimant who was viewed as the aggressor in the incident and also because he filed an injury report which attempted to conceal the cause of the injury and which more significantly, placed the source of the injury as employment related.

While appealing the claim on the property, the Organization questioned Carrier's conclusion that the trial record established the Claimant as the aggressor. We have reviewed the record with this challenge in mind and must conclude the testimony of several witnesses coupled with Claimant's own admissions establish him as the aggressor. Equally important, the Investigation record convincingly demonstrates the Claimant sustained the injury as a direct result of the altercation and not for the reasons set forth in the injury report filed that day.

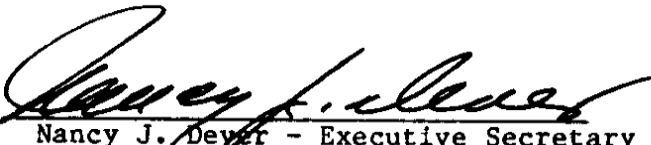
It is axiomatic that fighting while on duty, especially where serious injury is sustained, is a dismissal offense. So, too, is the filing of false injury reports. When we combine these infractions, we perceive no basis for disturbing the discipline assessed in this case.

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 1989.