

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Southern Pacific Transportation Company (Eastern Lines)

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

(1) The ten (10) days of suspension imposed upon Machine Operator D. W. Hicks for alleged violation of Rules 607 and 608 was unjust and on the basis of unproven charges (System File MW-86-18/445-57-A).

(2) The claimant's record shall be cleared of the charges leveled against him and he shall be compensated for eighty (80) hours at his straight time rate of pay."

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 involved in a minor altercation with another employee while on the job on November 13, 1985. Both were disciplined with ten day suspensions. Claimant appealed his suspension and an Investigation was held, following which the suspension was affirmed.

We have examined the transcript of the Investigation and find that it clearly establishes that the other employee, not Claimant, provoked an out-break of cursing between the two and was also responsible for striking the first blow. While it is true that Claimant could have avoided the incident by not seeking a ride in the truck the other was operating, and also could have walked away once the incident became heated, his overall conduct, at the time, has not been established to warrant discipline.

The discipline assessed will not be allowed to stand.

Form 1
Page 2

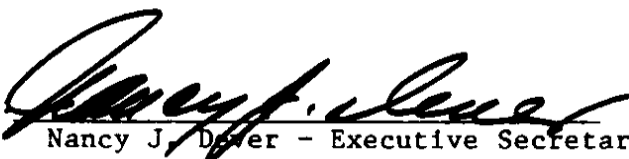
Award No. 28244
Docket No. MW-27443
90-3-86-3-802

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1990.