

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29586
Docket No. CL-30183
93-3-93-3-635

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

PARTIES TO DISPUTE: (Transportation -Communications
(International Union
(
(Northeast Illinois Regional
(Commuter Railroad Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10634) that:

1. Carrier violated the effective agreement when it withheld Mr. Carl Thomas from service effective October 25, 1990, and following an investigation held on October 30 and 31, 1990, suspended Mr. Thomas from service for a period of twenty days beginning October 26, 1990.
2. Carrier shall now rescind the discipline imposed, shall compensate Mr. Thomas for all time lost and shall clear his record of the charges placed against him."

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 employes involved in this dispute are respectively carrier and employe 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.

By letter dated October 25, 1990, Claimant and another employee, were removed from service pending Investigation and were charged with:

"...alleged violation of NIRCRC Employee Code of Conduct Rules B, D, E, N (paragraph 1 and paragraph 3, Items No. 1 and 6 and paragraph 4) and Q which allegedly took place during various times during the months of September and October, 1990, and specifically at approximately 6:50 P.M. on Wednesday, October 24, 1990, when you allegedly entered into a verbal altercation with each other and failed to properly and promptly report such altercation to your supervisor when assigned as Ticket Sales Clerk on Position Numbers 7 and 9."

Following the Investigation, Claimant received a five day suspension. This discipline required him to serve a fifteen day deferred suspension from a prior incident. The other employee received no discipline.

Prior to addressing the merits, we must consider several procedural arguments raised by the Organization. First, the Organization asserts the charge against Claimant was not sufficiently specific and the notice of discipline was not related to the charge. This Board has consistently stated an employee is entitled to a charge which is sufficient to place him on notice as to the subject matter of the Investigation and to permit him to prepare a defense. Generally, such a notice will state a fairly precise date as to when the conduct which is the subject of the Investigation occurred.

Every generality, however, has its exceptions. The circumstances underlying an Investigation may, by necessity, cause the Carrier to be less specific, while, at the same time, the employee charged may already fully understand the nature of the charge against him. Such is the case herein.

According to the Assistant Division Manager of Ticket and Station Services, this case started on October 24, 1990, when Claimant filed a complaint with the Carrier's Police Department about a confrontation between himself and the other employee. The following morning, the Assistant Division Manager asked Claimant for an explanation, and was told there were two other such confrontations with the other employee, the first being a month and a half earlier. Claimant apparently could not provide specific dates. In light of the fact Claimant brought these incidents to the attention of the Carrier, he cannot assert he was unaware of the nature of the Investigation.

When Claimant received the notice of discipline, it informed him that he was found guilty of a lack of courteous deportment and the failure to properly and promptly report an altercation. This language is substantially similar to that used in the notice of charge. Claimant was not disciplined for an offense not covered by the charge.

Secondly, the Organization asserts the Hearing Officers were guilty of unfair conduct by asking leading questions and refusing to permit the thorough examination of witnesses. We have reviewed the examples cited by the Organization and do not agree they constitute evidence of prejudgment or unfairness on the part of the Hearing Officers. Questions are leading when they put words in the mouth of the witness; not when they restate testimony the witness has already given.

Finally, the Organization objects to the fact that the discipline notice was issued by someone other than the Hearing Officers. We note, first of all, that the Discipline Rule does not specify who shall render the decision to issue discipline. While the trier of fact has valuable input into the discipline decision, particularly when there are questions of credibility to be answered, there are additional factors to be considered. For example, the Hearing Officer may not necessarily be in a position to determine the quantum of discipline to be imposed. Consequently, in the absence of a Rule to the contrary, we cannot say that discipline must be rendered by the Hearing Officer.

Turning to the merits, we find substantial evidence that there were verbal altercations between Claimant and the other employee. These altercations consisted of racially derogatory comments directed by Claimant to the other employee. Aside from the testimony of the two principals, there is independent testimony from another Ticket Clerk to this effect. Admittedly, there is conflicting testimony as to what occurred, but it is not the function of this Board to assess the credibility of witnesses and reweigh the evidence. We will not disturb the Carrier's finding unless it is clearly unreasonable.

Claimant's conduct certainly warrants discipline. Carrier has both a right and an obligation to take appropriate action when its employees are engaged in altercations, be they verbal or physical. When these situations have racial overtones, even among employees of the same race, the Carrier's need to respond is even more acute. Under the circumstances, we cannot find the assessment of a five day suspension to be excessive.

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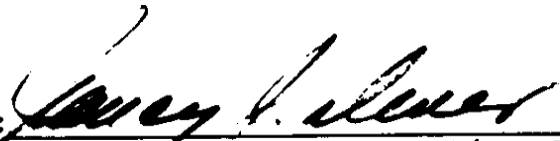
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1993.