

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32332
Docket No. MS-31999
97-3-94-3-208**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Aaron Williams
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on April 10, 1994, covering an unadjusted dispute between Aaron Williams and Amtrak National Railroad Passenger Association. This dispute involved two employees of same railroad. I would like this matter further looked into because of the following reasons:

- 1. Over looked information.**
- 2. False witnesses.**
- 3. Conspiracy and victimized against.**
- 4. Altercation was settled same day by supervisor, but four days later same supervisor called both employees to his office and put them out of service.”**

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 employee 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 involved in an altercation at work with fellow employee Lawrence Sylvester on August 20, 1993. Both employees were taken out of service on August 25, pending Investigation, and were notified the following day that an Investigation would be conducted on September 1, 1993 on the charge that they violated Rule F2 by assaulting and fighting with another employee while on duty. The Decision of the Hearing Officer issued on September 10, 1993 credited the testimony of Sylvester and Charleston George, a witness to the incidents in question, over Claimant's contradictory statements, and found that Claimant was the aggressor and was guilty of the charge of assaulting a fellow employee. Based upon such finding, Carrier dismissed Claimant from service, relying upon the serious conduct involved and the fact that Claimant had been previously found guilty of attacking a fellow employee on February 11, 1992, for which he was warned. The Organization filed an appeal on October 26, 1993 which was not pursued after the claim was conferenced.

Upon a complete review of the record and Claimant's arguments presented at the Hearing, the Board finds substantial evidence to support Carrier's finding that Claimant was guilty of violating Rule F2 by assaulting and fighting with fellow employee Sylvester. The record evidence consists of testimony of Claimant, Sylvester and George, an eye-witness to the altercation between the other two employees, as well as George's typewritten statement previously given to his supervisor. During the Investigation, Claimant was given full opportunity to cross-examine each of the other witnesses and make a closing statement, as was his representative from the Organization. Claimant's version of the events was markedly different from Sylvester's and George's, who showed Claimant to be the aggressor in each of the two confrontations on August 20, 1993. The record does not support Claimant's assertion that George did not see the altercation or that George fabricated his testimony in furtherance of his own attempts to obtain a favored position with Carrier.

As noted in Second Division Award 7542, the only way for us to sustain the claim is to make a credibility determination by rejecting Sylvester's version as corroborated by George and accepting Claimant's. As has been held in numerous prior Awards, this Board has no authority to resolve credibility questions, and must adopt those made by

the Hearing Officer if there is a reasonable basis to support his findings. See Third Division Awards 24640, 21278, 21258, 19696, 14556; Second Division Awards 7542, 6604, 6408. In this case we conclude that there is.

Having determined that there is sufficient evidence in the record to support a finding that Claimant was guilty of the charge, we turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious. See Second Division Award 13072. The facts clearly establish that Claimant was engaged in an unprovoked assault of a fellow employee while on duty, and had been previously warned for a similar act on February 11, 1992. While Claimant is a long service employee, the Board has consistently upheld dismissals for fighting on this property. See Public Law Board No. 3038, Award 4; Public Law Board No. 3625, Award 125; Public Law Board No. 4236, Award 16. Under such circumstances, we cannot say that Carrier acted unreasonably or exceeded the appropriate limits of its discretion in removing Claimant from service.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of November 1997.