

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42301  
Docket No. MW-42918  
16-3-NRAB-00003-150137**

The Third Division consisted of the regular members and in addition Referee Richard K. Hanft when award was rendered.

**PARTIES TO DISPUTE:** (Brotherhood of Maintenance of Way Employes  
( Division – IBT Rail Conference  
(  
(Norfolk Southern Railway Company

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissed) imposed upon Mr. B. Hall, Jr., by letter dated December 16, 2013, in connection with his alleged conduct unbecoming an employee in that on Monday, November 11, 2013, upon reporting to Kimball, West Virginia to begin his workday, he engaged in a verbal and physical altercation with his co-worker and directed unprofessional and offensive language at his co-worker during that altercation, was excessive, unwarranted, without just cause, and in violation of the Agreement (Carrier’s File MW-BLUE-13-46-LM-618 NWR).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. Hall, Jr. shall be reinstated, paid for all lost time and receive all other relief prescribed under Rule 30(d) of the Agreement.”

**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.

This claim concerns the discharge of Trackman B. L. Hall, Jr. for conduct unbecoming an employee on November 11, 2013. On that date, the record reveals, the Claimant engaged in a discussion with his Foreman concerning employees not responding to call-outs over the weekend for track repair. It was undisputed that the discussion became heated and laced with mutual swearing at one another. According to the record, the Claimant challenged his Foreman to meet him in the parking lot to settle the matter. The Foreman accepted the challenge and the Claimant admitted that he first shoved his Foreman, who then grabbed him, and the Claimant then punched the Foreman multiple times in the face.

The Foreman notified the Track Supervisor who traveled to the site of the incident. He investigated the matter, along with the Assistant Division Engineer, and a decision was made by them to take both employees out of service.

A formal Investigation was held on December 2, 2013. By letter dated December 16, 2013, the Claimant was notified that as a result of the findings at the formal Investigation, he was dismissed. The Claimant's Foreman was returned to service on December 4, 2013 after being held out of service for 23 days.

A copy of the transcript of the Investigation was sent to the Organization in accord with the Parties' Agreement, but the letter assessing discipline was inadvertently omitted due to a clerical error. That letter was immediately sent to the Organization when the Carrier was notified that it was not sent along with the transcript, but later than the 20-day period required by the Parties' Agreement.

The Organization argues that because the letter assessing discipline was inadvertently omitted from the mailing of the transcript, as is required by the Parties' Agreement, the discipline assessed cannot stand. While the Organization cites numerous Awards overturning discipline because of procedural inconsistencies, here neither the Organization nor the Claimant was prejudiced by the Carrier's clerical error.

Turning to the merits of the dispute, the Organization avers that dismissal is excessive and disparate when compared to the Claimant's Supervisor's 23-day suspension.

First and foremost, no rational employee can believe that they can batter their Supervisor without severe consequence. While a discussion that becomes emotionally charged might be swept under the rug when cooler heads prevail, once one crosses the line and punches a co-worker, there is no taking it back or explaining it away. In this instance, the Claimant admitted to the offense. To reduce the discipline assessed on the property would amount to leniency, which the Board is not empowered to dispense.

In regard to the Claimant being treated disparately relative to his Foreman who was only held out of service for 23 days, while the Foreman did admit to participating in the heated argument, swearing back at the Claimant, and accepting the Claimant's challenge to "step outside" for which he was held out of service, he did not punch anyone and was strictly defensive during the physical altercation and hence, should not receive the same discipline as he would have had he engaged in a fight.

The procedural defects involved in no way prejudiced either the Claimant or the Organization in the handling of this matter. The Claimant admitted to shoving and punching his Foreman and the discipline assessed was neither arbitrary, capricious nor excessive. Accordingly, the claim must be denied.

**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 15th day of June 2016.