

AWARD NO. 2
ITEM NO. 82

SPECIAL BOARD OF ADJUSTMENT NO. 541
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
AND
ERIE-LACKAWANNA RAILROAD COMPANY

STATEMENT OF CLAIM:

"(1) The Carrier violated the Agreement when it suspended Pile Driver Engineer Joseph Charnecki for forty-five (45) days without a fair and impartial hearing being held and on the basis of unproven charges that he committed assault upon Carpenter Joseph Jurusik 'at' about 4:00 P.M., January 13, 1961.

"(2) Mr. Joseph Charnecki now be paid for any wage loss suffered as a result of his suspension and his record be cleared of any unfavorable entry recorded thereon as a result of the violation referred to in Part (1) of this claim."

FINDINGS:

Claimant received a forty-five day suspension after hearing was held on charges that he had assaulted a fellow employee on the property during the working day. In line with well established principles of the National Railroad Adjustment Board, we will not disturb Carrier's findings that Claimant did commit the assault, inasmuch as they are supported by credible, though controverted testimony, including a detailed and plausible account of the incident by Claimant. It is for Carrier to determine questions of credibility and we note that it arrived at its decision only after it had observed the demeanor and statements of all the witnesses.

Although Carrier's hearing officer was in error in excluding Claimant's representative from the hearing room while several of the witnesses were testifying, that defect is not sufficiently prejudicial to persuade us to upset Carrier's findings, particularly since the testimony of none of those witnesses proved helpful to either party. Nevertheless, in view of that defect, the record is not strong enough to support more than a thirty-day suspension at the most, and we will direct that Carrier's records, including Claimant's service record, be modified to reflect this reduction in discipline and that the necessary adjustment in compensation be made to Claimant.

AWARD:

Carrier's findings sustained but discipline reduced from 45 days' suspension to 30' days suspension.

Dated at New York, N. Y., this 25th day of August, 1964.

/s/ Harold M. Weston
HAROLD M. WESTON, REFEREE

/s/ Arthur J. Cunningham
ORGANIZATION MEMBER

/s/ R. A. Carroll
CARRIER MEMBER