

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25873
Docket Number MW-25881

Charlotte Gold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

(1) The fifteen (15) days of suspension imposed upon Trackman E. W. Smith for alleged violation of 'Rule 3013' was without just and sufficient cause and on the basis of unproven charges (System Docket CR-90-D).

(2) The Claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On September 22, 1982, Claimant, a Trackman, was issued a notice to appear for an investigation into the following charge:

"violation of Rule 3013 of Conrail's S7-C Safety Rule Book, in that you attempted to assault Assistant Supervisor, Joe Mascara at approximately 1:00 PM, on September 15, 1982, at New Brighton, PA."

The investigation was held on October 1, 1982. Claimant was found guilty and was assessed a thirty-day suspension.

A Claim was filed on Claimant's behalf. Based on his clear prior discipline record, his suspension was reduced to fifteen days by the Manager-Labor Relations. Further appeal was denied by the Senior Director-Labor Relations and the Claim was advanced to this Board for a final determination.

Carrier maintains that the transcript of the investigation contains substantial credible evidence of Claimant's guilt; the hearing was fair and impartial; and that no further modification of its lenient discipline is appropriate.

The Organization argues that Claimant was not attempting to assault his Supervisor, but was merely trying to explain the reason for his reluctance to operate a hydraulic spike puller. Thus, Carrier has failed to prove the exact offense upon which its discipline is based. Further, Claimant did not receive a fair and impartial hearing because the Hearing Officer prejudged Claimant's guilt.

The Board has reviewed the transcript of the investigation, which has been made a part of the record of this case. That transcript reveals that Claimant was afforded all procedural protections guaranteed by Agreement and that there was sufficient evidence of a probative nature to substantiate the Hearing Officer's finding of guilt.

Claimant maintains that his interpretation of the events should be credited more than those of Carrier's witnesses. Clearly, the Investigating Officer made a credibility judgment in this instance and there are numerous Awards of this Division that state that Hearing Officers are in a far better position than members of an appellate body to make such a determination.

In light of the proven infraction, we do not find fifteen day suspension to be excessive.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January 1986.