

NATIONAL RAILROAD ADJUSTMENT BOARD  
FOURTH DIVISION

Award Number 4499

Referee Marty E. Zusman

Docket Number 4490

PARTIES TO DISPUTE: The American Railway and Airway Supervisors Association:  
A Division of BRAC

Consolidated Rail Corporation

STATEMENT OF CLAIM: It is the Claim and request of the Petitioning Organization that:

1. Respondent Carrier violated the agreement, and in particular, RULE 15 when it dismissed Mr. R. C. Seymour, Foreman, Selkirk Diesel Terminal, in all capacities, as a result of a hearing held on October 17, 1984, (later allowing him to return to service as a Craftsman) in that such action was unjust and unwarranted.
2. Carrier be required to restore Mr. Seymour to his Foreman's position, with all rights and benefits unimpaired, and compensate him for all wages lost as a result of Carrier's wrongful action.

OPINION OF BOARD: Claimant R. C. Seymour, prior to his dismissal from service on October 30, 1984, was a Foreman at the Selkirk Diesel Terminal. Following an October 17, 1984 Hearing, Claimant was dismissed for violating Safety Rules 4011 and 4012 which read in pertinent part:

"Rule 4011. Personal conduct must be free from scuffling, practical jokes or horseplay while on duty or on Company property.

Rule 4012. It is essential to safety that employees performing service must give their undivided attention to duty; the following are prohibited:

(d) engaging in any activity which is not directly associated with your duties."

The instant case resulted from an incident in which the Claimant took part in binding and restricting a fellow employee with tape to such a degree that the employee was injured.

Following the instant altercation the Claimant was removed from service pending an Investigation. The Organization alleged that such action violated the Agreement (Rule 15) and denied the Claimant a fair and impartial Investigation. This Board has reviewed the circumstances and consistent with numerous past Awards (First Division Awards 16584, 16344 and Fourth Division Award 3555), finds that the Carrier's determination was based upon the alleged seriousness of the act and was not in and of itself prejudicial to a fair and impartial Hearing.

It is the Organization's position that the incident was far less serious than the Carrier alleges and the Claimant's discipline was not commensurate with the violation. The Claimant's dismissal and subsequent reinstatement, but without compensation and with disqualification as Foreman, was factually unjustified. The Organization points to testimony suggesting that the Shop Superintendent unduly influenced his subordinate (e.g. Claimant) to engage in the behavior. It further notes that such "horseplay" was very common and the incident at bar may well have been precipitated by the injured employee. As such, the violation by the Claimant, a ten year employee with a clean record, does not justify the harsh punishment of the Carrier.

The Carrier maintains that the injured employee's account demonstrates that he was treated roughly by activities in which the Claimant was directly involved. The Claimant admits involvement although disputes the seriousness of the incident, attack or "horseplay." The Carrier argues that the use of masking and electrical tape in restraining the employee, along with other physical abuse, violates the Rules and warrants the Carrier's strong disciplinary action.

By long established precedent, this Board does not resolve issues of fact and credibility. From the record as a whole this Board concludes that the Claimant's rights were protected and that the Carrier's findings of guilt were supported by substantial probative evidence. The Claimant admits guilt and the record unquestionably establishes such guilt.

As for the imposed discipline, the Carrier has a right and an obligation to protect the safety of the work place. The Claimant, as employee and Foreman had an obligation to avoid violations of Safety Rules. The Claimant directly involved himself in violations which could have resulted in far more serious consequences and injuries and he displayed behavior which resulted in the serious ramifications at bar. The Board finds the Carrier has not acted in an arbitrary or capricious manner, or in an abuse of discretion when it disqualified the Claimant as Foreman. Substantial evidence and a careful review of the Hearing Transcript demonstrates the Claimant's guilt in an incident which was far more serious than horseplay. The Carrier's decision that the Claimant can no longer responsibly fulfill the Foreman's supervisory duties will not be disturbed by this Board.

#### FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing  
thereon.

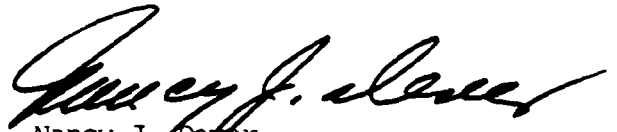
The parties to said dispute waived right of appearance at hearing  
thereon.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Fourth Division

ATTEST:



Nancy J. Dever  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December 1986.