

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Form 1

Award No. 4890
Docket No. 4887
93-4-92-4-18

The Fourth Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (The American Railway & Airway Supervisors
(Association: A Division of TCU
(
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM:

"It is the Claim and request of the Petitioning Organization that:

1. Carrier has violated the Agreement, and in particular Rule 19 - Discipline when they assessed the discipline of 5 days actual suspension to Mr. R. Ramirez, Foreman, following a hearing held February 6, 1991 on charges of improper conduct concerning another employee. Said discipline being unwarranted and an abuse of Carrier's discretion.
2. As a result of this violative action, Carrier be required to rescind the discipline assessed and pay Mr. Ramirez for all monetary loss incurred."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

By letter dated January 25, 1991, Claimant was directed to appear for a formal Investigation into alleged violation of Rule F, Sections 1 and 2. After postponement, the Investigation was held on February 6, 1991, and subsequently Claimant was found guilty as charged and assessed five days actual suspension.

The Organization appealed the discipline on property noting that there were no witnesses to the alleged pushing, threatening and abusive language charged against the Claimant. The Organization argues that the Carrier failed to produce sufficient evidence to conclude that Claimant violated Rules of appropriate conduct. In fact, it questions the Hearing Officer's credibility decision, as well as arguing that the Claimant did not violate the Agreement.

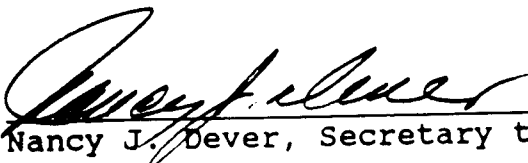
The Hearing Officer was present and able to observe the demeanor of the witnesses. There is no evidence that his decision was capricious and this Board in its appellate function "does not resolve issues of ...credibility" (Fourth Division Award 4499). On merits, the facts were forthcoming in testimony. The Carman alleged that the Claimant pushed him, threatened him with a screwdriver and called him demeaning names. The Claimant admitted he was in possession of a screwdriver and specifically that he referred to the Carman as a "puto" (sissy) and "a fat sow belly." Claimant's misconduct was clearly documented by his own admissions. Although not the Carman's direct Supervisor, Claimant's position of Supervisor requires a higher level of conduct than was shown by his testimony. This Board finds the evidence of a violation of the Agreement substantial. The Carrier has met its burden of proof. The Board will not disturb the Carrier's decision in the instant case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 29th day of June 1993.