

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13687
Docket No. 13566
02-2-00-2-47**

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(International Brotherhood of Electrical Workers
(System Council No. 16**

PARTIES TO DISPUTE: (

(Burlington Northern Santa Fe Railway Company

STATEMENT OF CLAIM:

- “1. That in violation of the current Agreement, Rule 35 in particular, Electrician Jerome Long was issued a Level S suspension of thirty days, placed on probation for a period of three years and required to contact an Employee Assistance Counselor and follow a prescribed program deemed appropriate for sensitivity training by the Burlington Northern/Santa Fe Railroad Company following an investigation held on November 25, 1998.**
- 2. That the investigation held on November 25, 1998 was not a fair and impartial investigation under the terms required by the rules of the current Agreement and that the issuance of the thirty day suspension, a three year probationary period and the requirement to follow a prescribed program deemed appropriate for sensitivity training was unjust, excessive and unwarranted.**
- 3. That accordingly, the Burlington Northern/Santa Fe Railroad Company should be directed to make Electrician Jerome Long whole for all lost wages, rights, benefits and privileges which were adversely effected by his suspension further, the probationary period set aside and that all record of this matter be removed from Mr. Long’s personal record.”**

FINDINGS:

The Second 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.

After Investigation, and by letter dated December 11, 1998, the Claimant received a 30-day suspension, was assigned a probation period of three years and was instructed to contact EAP for sensitivity training.

Testimony from the Investigation shows that on the dates of charged misconduct, the Claimant engaged in the following actions:

Engineer J. A. Gamble testified that he witnessed the Claimant make threats to different employees, including Conductors J. E. Smith and T. P. Brooks.

Conductor Smith testified that the Claimant followed him into the Trainmaster's office, got three inches from his face and started yelling at Smith about talking about him; the Claimant stated that "if you don't stop talking about me behind my back, I'm going to kick your ass"; the Claimant stated that "I'm going to get a gun and start shooting sons of bitches like you; and the Claimant told Conductor Brooks that if he didn't quit throwing his newspapers away "I'm going to kick your ass."

Conductor Brooks testified that the Claimant threatened to get a gun and start shooting sons of bitches like Smith; the Claimant threatened to kick Brooks' ass if Brooks threw his newspaper away again; and also referred to the employees as "m-----f-----."

Conductor R. J. Phillipp testified that he walked into the Trainmaster's office and noticed the Claimant eating lunch; Phillipp considered the smell of the Claimant's lunch unpleasant and handed the Claimant a sign from the bulletin board which stated no food in the office; the Claimant jumped from his chair, got within inches of Phillipp's face and stated "you can take this sign and wipe your ass with it [a]nd if people don't stop f----- with me, I'm going to kill someone"; the Claimant further stated he was "going to retire in a couple of years and he was going to take some m-----f----- with him . . . I'll kick you f----- ass"; the Claimant subsequently approached him and said "you are the m-----f----- that turned me in . . . I'm not afraid of you and I'll beat your f----- ass."

Conductor M. Washington testified that the Claimant stated he would mess up whoever was messing with his stuff.

The Claimant concedes that in some circumstances he engaged in threatening behavior. According to the Claimant:

"Q. . . . Mr. Long, your witness Mr. Sims stated there was a confrontation and that you said whoever was messing with your stuff you were going to deal with it. Is that a correct statement?

A. Yes sir.

* * *

Q. . . . Mr. Long, your other witness Ms. Washington stated that you pretty much blew up and that you stated that you would mess up whoever was messing with your stuff and that she was trying to calm you down, is that correct?

A. I'll have to say yes."

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. Rule S-28.6 states that employees must not be quarrelsome; Rule S-28.7 prohibits altercations; and Rule 90.2 states that the Carrier will not tolerate verbal or physical conduct by any employee which harasses or which creates an intimidating, offensive or hostile environment. Substantial evidence shown by the above testimony demonstrates that the Claimant violated those Rules.

Nor do we find the amount of discipline - a 30-day suspension, the probation and the requirement for sensitivity training with the EAP - to be arbitrary. The bottom line is that the evidence shows that the Claimant threatened other employees, which threats included physical violence and shooting. In similar circumstances, that kind of conduct could be a dischargeable offense.

The Organization's contention that the Claimant was harassed by other employees does not change the result. Nothing justifies the extreme types of threats made in the workplace by the Claimant as demonstrated by this record. If the Claimant was having problems with other employees, he should have taken those problems to supervision. The Organization's other arguments similarly do not change the result.

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 Second Division

Dated at Chicago, Illinois, this 24th day of April, 2002.