

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 14077  
Docket No. 13970  
14-2-NRAB-00002-130012**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(Sheet Metal Air, Rail & Transportation Workers  
PARTIES TO DISPUTE: (  
(Massachusetts Bay Commuter Railroad**

**STATEMENT OF CLAIM:**

“Claim is made for and on behalf of Sheet Metal Worker Charles Williams, hereinafter referred to as ‘Claimant,’ to be reinstated to service immediately with seniority rights unimpaired; moreover, claim is made for Claimant to be made whole for all time lost, including, but not limited to, vacation credits, personal days, arbitraries, reimbursement for all health care costs, pay for attending the investigation on November 14, 2012 and for all mention of this incident to be expunged from his personal record as a result of being dismissed in all capacities from the service of Massachusetts Bay Commuter Railroad, hereinafter referred to as the Carrier, commencing on November 28, 2012.”

**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.

Initially hired as a Laborer, Claimant Charles Williams had been promoted to Sheet Metal Worker/Pipefitter at the Massachusetts Bay Commuter Railroad on November 6, 2006, where the record indicates he had performed satisfactorily until becoming involved in a confrontation with management officials on October 31, 2011, leading to his dismissal. In this claim, the Organization asserts that the Carrier's action was arbitrary, should be vacated and the Claimant reinstated with an award of back pay.

As is apparent from what follows, the facts giving rise to the dispute are reasonably undisputed except with respect to issues of provocation. The record developed at the formal Investigation into the triggering incidents held on November 14, 2012, clearly demonstrates that the Claimant physically assaulted Foreman Shawn Lucien and Manager Paul Hanson around 2:00 P.M. on October 31, 2011, at the Carrier's south side S&O Facility, South Boston. The Carrier contends those actions constituted clear violations of its Code of Conduct, Rule 8 (h) Prohibited Acts, as well as its Workplace Violence Policy HRPP-037. Accordingly, it urges, just cause has been shown for the dismissal action and the Organization's claim on Williams' behalf must be rejected.

The Organization takes the position that the Carrier's assessment of the Claimant's conduct seriously exaggerated matters, as supported by the discrepancy between the contents of the written reports compiled by management personnel at the time of the events at issue and their testimony at the Claimant's formal Hearing. Additionally, it argues, that the Claimant is a 13-year employee with an unblemished record of service, who at no time was ever previously charged with any type of conduct such as that charged here. Clearly, something went wrong on October 31, and the record establishes that the problem was the medical condition for which he was then being treated. In light of the reasonable explanation provided by the Claimant, discipline was unwarranted.

The Carrier's obligation in matters involving dismissal is to satisfy the well-established burden of proving its case by substantial credible evidence. Notwithstanding the vigorous efforts of the Organization on Claimant William's behalf, the facts of record suggest it has been dealt a hard hand to play. On the date giving rise to the claim Williams' conduct was seriously offensive to well known and

consistently enforced Carrier Rules against workplace violence. Accordingly, in this instance the Carrier has borne its burden.

A brief review of some of the relevant testimony given at the formal Hearing is offered in aid of understanding the Board's conclusions. The facts establish that Daniel McGuire, Superintendent of South Side S&I, at Southampton Street Yard, was approached by Foreman Shawn Lucien around 1:20 P.M. on October 31, 2011, and informed that Lucien had been unsuccessful in locating Claimant Williams to assist in servicing a locomotive. When finally contacted by phone, the Claimant indicated he was enroute back to the facility from Dunkin' Donuts. McGuire then says he attempted to locate the Claimant without success, eventually going to the parking lot where he observed him in the process of returning to the building. The Claimant was asked to report to the Foreman's office, and upon entering was observed to be not wearing his hard hat or safety glasses as required in the building. When directed to obtain them, according to McGuire, the Claimant became angry, and in a loud voice, "Chuckie replied he would when everyone else starts wearing them."

McGuire states that the Claimant went to his car, retrieved his safety equipment and went to Foreman Lucien's office as instructed. According to McGuire, he and Mechanical Director South Side Operations Paul Hanson then heard a loud voice coming from the office. When they arrived there, McGuire states they observed:

"Chuckie was right in Shawn's face, calling him 'fat boy.' Shawn asked Chuckie to back away from him. Chuckie proceeded to get closer. Chuckie then pushed Shawn in the chest. Shawn fell back on top of the desk. Myself, Paul Hanson and Foreman Rob Clemons did all we could to pull Chuckie off of Shawn."

McGuire's contemporaneous report indicates that the Claimant was "three inches from" Lucien while yelling at him. At one point, he states, the Claimant had Lucien backed up against his desk, butting him with his head and chest and 'put [ting] his hands around his neck.' The Claimant was escorted to his car by McGuire and Hanson and taken out of service.

The testimony of Paul Hanson is aligned in all material respects. Hanson testified that upon being told he needed his hard hat and glasses, the Claimant “yell[ed] incoherent words back at me.” He states that he went to Lucien’s office when he heard loud conversation and observed the Claimant “head butting Shawn Lucien and bumping up against him. He actually had his hand around Shawn’s neck forcing him against the wall.” According to Hanson, MBTA Police arrived around 3:15 P.M., took statements from the principals and photographed Lucien’s neck. The pictures offered in evidence by Transit Police Officer Lisa Murawski-Dupont reveal what appears to be discoloration around Lucien’s throat area as well as a red scratch mark on the throat.

Foreman Robert Clemons, with 24 years of service, recited in the written statement provided at the time that, “Charles W. grabbed Shawn around his neck and forces him on top of the office desk.” He states that prior to that confrontation:

“... Charlie Williams entered S&I foremen’s office and started saying to both Shawn Lucien and myself, ‘Which one of you two mother fuckers ratted me out?’... Paul Hanson and I asked Charles Williams to release Shawn. After three seconds of asking ... both Paul Hanson and I pulled Charles Williams off Shawn Lucien.”

Lucien, Claimant’s direct Supervisor, offers an extensive statement, containing, in pertinent part, the following description of the events:

“Chuckie ... threw open the door of the office and said, ‘Which one of you mother fuckers ratted me out?’ I said, ‘Hold it. Are you the foreman?’... and he ran – got right in my face ... saying, ‘What’s up? What’s up?’ I said Chuckie, get out of the office. I opened the door and said, ‘Get the fuck out of the office.’ At that time Paul Hanson and Danny McGuire saw us arguing ... at the time he hit my forehead with his hard hat and kept bumping me with his chest. I – I can’t even read my own writing – four times really quick and forcefully. ‘What’s up? What are you going to do, fat boy?’ Then Paul Hanson stepped in, pulled him off of me and ... that’s when he grabbed my ... throat. At that time I tried to push him away and then all hell went loose and

**Chuckie was enraged and kept coming until Paul Hanson and Rob Clemons pulled him away. . . .”**

**Uncontradicted record evidence reflects that criminal assault and battery charges ensued, resulting in the Claimant being placed on probation, a protective order issued and the Claimant referred to a drug treatment program.**

**The Claimant’s testimony at the Hearing in response to the charges proffered is at all times civil. He fully acknowledges his responsibility for the argumentative and disrespectful conduct affirmed by the Carrier’s witnesses and freely concedes it was not consistent with the Carrier’s policy. He insists, however, that he never put his hands on Hanson. To the extent an explanation for the outbreak is offered, it is simply that the Claimant was called to his Foreman’s office to receive an order and Shawn Lucien:**

**“ . . . told me to get the “F” [out of] the office.” . . . I says, “Shawn, don’t talk to me like that. I don’t talk to you like that.’ And I asked him twice, I said, “What is that you need me to do?” And he didn’t say nothing. He was red. And he didn’t say nothing again. And then he slammed his drawer and said, ‘You know what, just get the fuck out of the office.’ And that’s when I felt . . . very, very threatened.”**

**In assessing the relative credibility of the competing witnesses, the Carrier’s Hearing Officer opted to credit the testimony of McGuire, Lucien and Clemons over that of the Claimant. As an appellate forum, the Board is bound by that judgment in the absence of patent error.**

**With respect to the level of discipline assessed, the Board is similarly compelled to accept the Carrier’s judgment. In view of the testimony of all witnesses, the documentary evidence received (including photographic evidence) the incident at issue presented the potential for serious injury, with three people required to remove the Claimant from the scene. The Organization argues that the Claimant’s behavior should be attributed to drug usage, although the sole record evidence on that point is the Claimant’s statement that he “had a lot going on in his life at the time.” Thus, while it is unfortunate that the events depicted led to the separation of a man with a relatively long record of satisfactory service as a**

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Massachusetts Bay employee, the Board is offered no objective grounds for concluding that dismissal was arbitrary, or not based upon traditional standards of just cause. Accordingly, the claim must be denied.

**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 25th day of November 2014.