

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22875
Docket Number MW-22988

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(St. Louis Southwestern Railway Company

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

(1) The Carrier violated the Maintenance of Way Agreement, especially but not limited to Rule 6 - Discipline and Grievances, when Foreman Jodia Shelton and Track Laborer Ricky Hamilton were unjustly dismissed on February 22, 1978 (System File MW-78-5-CB).

(2) Track Foreman Jodie Shelton be reinstated to his former position, with pay for all time lost and with all seniority, vacation and other rights restored. Also the charge shall be stricken from his record.

(3) Extra Gang Laborer Ricky Hamilton be reinstated to his former position, with pay for all time lost and with all seniority, vacation and other rights restored. Also the charge shall be stricken from his record."

OPINION OF BOARD: This case involves Foreman Shelton and Laborer Hamilton, both of whom were employed on Extra Gang 6123 at Plano, Texas. The two men were taken out of service for fighting with one another. Carrier held a hearing into the matter on March 14, 1978. As a result, both employees were discharged from service.

The case was appealed on the property, denied at each step, and has settled in this dispute before the Board. Employees Shelton and Hamilton are dual claimants in the case. Both have been represented by officials of the Brotherhood of Maintenance of Way Employees throughout these proceedings.

The stenographic minutes of the hearing were made a part of the record. A careful review of those minutes reveals that a fair, impartial, and complete hearing into the matter was held and that both claimants were afforded all of their substantive procedural rights under the contract. A review of the record produced the following pertinent facts:

1. Laborer Hamilton and Foreman Shelton had some difficulty on the job prior to the incident resulting in their discharge.
2. The two men had words on February 22, 1978, at about 7:00 or 7:30 a.m., when Hamilton showed up late at the derailment site and wanted to go to work.

3. The roadmaster also had words with Hamilton, but he eventually allowed him to begin work.
4. Foreman Shelton and a fellow employe were walking on the street at about 12:15 a.m., after work, when Laborer Hamilton approached them.
5. A fight between Hamilton and Shelton erupted. Shelton pulled a knife; Hamilton took it away from him, but was cut in the process.
6. The police were called and the fight broke up. The record does not indicate if any civil charges were leveled against either man.
7. Roadmaster Griffen heard about the fight over his radio and proceeded to the site. He inquired as to what happened and discovered that Hamilton and Shelton had been in an altercation. He took both men out of service.
8. A question remains as to whether the fight took place on company property. There is no question that the fight took place while both men were off duty.
9. As a result of the hearing, Carrier upheld the discharge of both claimants for violation of General Regulation M801 and General Rule N.

The issue before this Board, simply stated, is did the conduct of claimants constitute a violation of the cited rules and, if so, is discharge from service the appropriate penalty? At the outset of this discussion, it must be pointed out that when two claimants are involved in a case such as this, their behavior and culpability must be analyzed separately. If both are equally guilty and have comparable work records, then both receive the same penalty. If their work records are not the same or they are not equally culpable, an appropriate but different penalty can be imposed on each.

In the instant case we have a situation in which one claimant, the foreman (Shelton), acted far more improperly than did the other claimant, a laborer (Hamilton). Claimant Hamilton approached claimant Shelton on the street; he brushed by him to approach the man walking with Shelton. A fight started as a result of that brief contact between the two men. Shelton threw the first punch; Shelton pulled a knife and cut Hamilton. Hamilton took the knife away from Shelton, but did not use it on him. By pulling the knife, Shelton reacted in a manner that escalated the confrontation between

the two men. He went far beyond what would have been required to defend himself or to retaliate in kind. In this regard, Shelton is guilty of an assault on Hamilton that was far more severe than the aggressive action Hamilton took against Shelton.

This Board is mindful of the difficult life some rail gang employees lead. It is also mindful of the fact that men working under such conditions may, on occasion, fight and argue among themselves. It would be unrealistic of the members of this Board or others connected with the railroad industry to think otherwise. Despite the practicalities of the situation, however, it is completely unacceptable to assault a fellow worker with a knife. A fist fight or a brief physical confrontation demands a certain level of discipline; pulling and using a knife in a fight with a co-worker results in a radically different penalty. Such actions cannot be tolerated by Carrier or this Board. The continued employment of a foreman who would pull a knife on one of his men can only lead to further problems for carrier supervision. They cannot and should not be burdened with such a problem.

The Board is of the opinion that the dismissal of Foreman Shelton is proper. The Board, however, does not think that Laborer Hamilton should be permanently separated from service for his part in the incident. There is no indication in the record that when he approached Shelton and the other worker on the street that he intended to assault Shelton. In fact, the record reveals that he sought to apologize to the man with Shelton for the argument that they had earlier in the day. There is nothing to show that he attacked or threatened Shelton prior to the time when Shelton took a swing at him and pulled a knife. Hamilton reacted to Shelton's action as any man would: he grabbed him, wrestled him to the ground, and took the knife away from him. He did not, however, use the knife on Shelton. He finally allowed him to get up, unharmed.

While this Board can, under no condition, condone fighting or brawling by employees on or off the property, it is of the opinion that Hamilton should not be permanently separated from service for his part in this incident. He is, however, deserving of severe discipline and should not get off without penalty. Laborer Hamilton should be given another chance to become a worthwhile employe of Carrier, but he should realize that he cannot maintain his employment in the future if he continues to be argumentative and aggressive when he is confronted with similar situations. This Board, therefore, directs that claimant Hamilton be reinstated with no back pay, but without loss of seniority or other benefits.

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 Employees involved in this dispute are respectively Carrier and Employees 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 dismissal of Laborer Hamilton was excessive.

A W A R D

The claim of Laborer Hamilton is sustained in accordance with Opinion.

The dismissal of Foreman Shelton is upheld.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1980.