

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41285
Docket No. MW-40558
12-3-NRAB-00003-080404**

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(New Orleans Public Belt Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Truck Driver Wade Joseph for his alleged violation of Rule 1.6 Conduct and General Order No. 376 on May 24, 2007, when he engaged in boisterous, vulgar and threatening language and brandished a knife to another employe at France Yard Office, New Orleans, Louisiana was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System File LLWNOPB-07-01).**
- (2) As a consequence of the violation referred to in Part (1) above, Truck Driver Wade Joseph shall now have his ‘. . . personal record cleared of the allege charges, and be reinstated with all back pay, with seniority unimpaired, and all other rights due him under the Collective Bargaining Agreement.’”**

FINDINGS:

The Third 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.

Following a formal Investigation at which he was charged with engaging in an altercation on company property on May 24, 2007, the Claimant was dismissed from service. According to the Carrier, the Claimant was upset about a phone conversation he had with Machine Operator J. Reed earlier that day. When he encountered Reed in the yard office during their lunch break, the Carrier contends that the Claimant began swearing and insulting Reed. According to the Carrier, an argument between Reed and the Claimant escalated to the point where two other employees had to defuse the situation. At one point during this incident, the Claimant had his knife in his hand and, according to the Carrier, threatened Reed with it. The Organization does not dispute that there was a verbal altercation between the two employees, or that the Claimant was holding his knife. It argues, though, that the Claimant did not brandish the knife in a threatening manner. It says this was a small pocket knife and the Claimant had been cleaning his finger nails with it prior to and during the altercation.

Based upon the record before the Board, we find that there is uncontroverted evidence that the Claimant engaged in a verbal altercation with another employee, using language inappropriate to the workplace, and that this conduct warrants the assessment of discipline to some degree. However, we find that the evidence is insufficient to establish that the Claimant used his pocket knife in a threatening manner. In this regard, we find the Hearing Officer's determination to be unreasonable.

We do not wish to diminish the seriousness of employees engaging in altercations at work, whether they are verbal or physical. If employees have differences, they must either resolve them in a civil manner or address them with management. The workplace is not an appropriate venue for testosterone induced displays of force. The Carrier is justified in assessing severe discipline upon employees who fail to understand this. In this case, though, we find that the Carrier was influenced in its decision to dismiss the Claimant by the belief that he threatened Moss with the knife. As we noted above, that belief is not supported by the record. The Board notes that Moss received a 30-day suspension for his part in this incident. Under the circumstances, we find that the discipline imposed upon the

Claimant was excessive. Accordingly, we find that the Claimant shall be reinstated to the Carrier's service with his seniority rights unimpaired, but without compensation for lost time. Upon his return to work, the Claimant must understand that this is a last chance for him to demonstrate that he can comport his behavior in the workplace to the standards set by the Carrier. Any future conduct of this nature will most assuredly result in his permanent dismissal.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 28th day of March 2012.