

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23314
Docket Number MW-23311

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

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

(1) The dismissal of Bridge and Building Carpenter Vic Blanchette for alleged violation of 'Rules 701-A and 701-B' was without just and sufficient cause (System File C#131/D-2237).

(2) Carpenter Vic Blanchette shall be reinstated with seniority and all other rights unimpaired and shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant A. V. (Vic) Blanchette was employed with the Carrier as a Bridge and Building Carpenter. On October 5, 1978 he had an altercation with Pump Repairer Frank Rubis and was charged with violation of Rules 701(A):

"Playing practical jokes, scuffling, wrestling, or fighting while on duty or on Company property, as well as throwing of tools or materials is prohibited."

and 701(B):

"Employee must not enter in to altercations with any person, regardless of provocation, but will make note of the fact and report such incident in writing to their immediate superior."

An investigation on October 12, 1978 and a formal hearing in the office of the Carrier's Division Manager resulted in Claimant's dismissal.

It is asserted on behalf of Claimant that when he grabbed Rubis, the other party to the altercation, it was in self defense. There are conflicts in certain aspects of the testimony of the Claimant and Rubis, but it is not the function of this Board to resolve such conflicts. Nevertheless, the record does indicate that Claimant according to his own testimony was not assigned to work that day but nevertheless came in to talk to Rubis about "continuously insulting and harassing" another employe. Clearly Claimant was coming after Rubis. Indeed, according to Claimant's own testimony, when Rubis told him to get away from the truck where Rubis was sitting or "he would bust his head" and Rubis was swinging a piece of pipe at him, Claimant kept on coming after Rubis, climbed the truck, put his hands through the open cab window and grabbed Rubis. Thus there is substantial evidence in the record to support a finding

that Claimant was involved in an altercation, the alleged cause of which should have been handled at an official level from the beginning, and that contrary to his claim of self defense, he sought out Rubis for the purposes of a confrontation, climbed after him into the truck and was the aggressor throughout. Given Claimant's prior record of dismissal with restoration to his job based on leniency plus subsequent warnings, dismissal is reasonable and justifiable.

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 Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1981.

