

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24655
Docket Number MW-24805

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(Burlington Northern Railroad Company
((St. Louis-San Francisco Railway Co.)

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

(1) The dismissal of Trackman J. L. Mathews for alleged violation of "Rules 176, 652 and 654" was without just and sufficient cause (System File B-2039/MWC 81-12-17B).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Prior to his dismissal Claimant was employed as a Trackman, assigned to Tie Gang T-1-10 under supervision of Assistant Foreman Emerson.

On May 20, 1981, Carrier addressed the following letter to Claimant:

"Please arrange to report to the Assistant Superintendent of Roadway Maintenance office, 1625 N. Lexington, Springfield, Missouri at 1000 on May 26, 1981 for an investigation on your behalf as requested by Mr. E. R. Spears, General Chairman for the Brotherhood of Maintenance of Way Employes.

The investigation is to develop the facts and determine your responsibility, if any, in your alleged violation of Rules 176, 652 and 654 of the Rules for the Maintenance of Way and Structure which resulted in your being dismissed from Tie Gang T-1-10 on May 8, 1981.

You may be represented at the investigation by a duly accredited representative of the Brotherhood of Maintenance of Way Employes."

The rules cited by Carrier which were allegedly violated are:

"Rule 176. Employees who are negligent or indifferent to duty, insubordinate, dishonest, immoral, quarrelsome, insolent or otherwise vicious or who conduct themselves and handle their personal obligations in such a way that the railway will be subject to criticism and loss of good will, will not be retained in the service."

"Rule 652. Employees who are careless of the safety of themselves or others will not be continued in the service."

"Rule 654. Wrestling, fighting, throwing of material, 'fooling' or practical joking while on company property is prohibited."

Evidence adduced during the hearing clearly established Claimant threw or flipped a saw blade some 2 1/2 to 3 feet into a keg which was setting on a cart being pushed by another employe. Although the other employe was not struck the foreman started to warn Claimant against such actions and at that point was given an argument by Claimant. The foreman and roadmaster felt the Claimant's actions were serious enough that he was released from service immediately. On a previous occasion Claimant had thrown a spike maul, also considered a dangerous act. In addition, he had been counseled on two occasions because of his unsatisfactory work habits. Claimant admitted flipping the saw blade and argumentative remarks to his foreman whether it was merely flipped as described by Claimant or thrown hard as contended by the foreman are the two sides of the question. The fact that the foreman, who was responsible for safe work habits of his men viewed it as an irresponsible act with potential danger to another employe is clear and convincing.

Based on the evidence reviewed herein we do not find the Carrier action to be arbitrary or capricious. Claimant's dismissal from service was for just and reasonable causes.

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 Employee within the meaning of the Railway Labor Act, 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984