

The Third Division consisted of the regular members and in addition Referee Gil Vernon when award was rendered.

(Mark Lammiman
PARTIES TO DISPUTE: (
(Burlington Northern Railroad Company

STATEMENT OF CLAIM:

"Therefore, it is required to reinstate Mr. Lammiman to Burlington Northern Railroad service with all his seniority rights unimpaired. Further, a claim is hereby submitted for Mr. Lammiman at the rate of his position of 18055 Section Stockman for September 27, 1984 and every day thereafter until he is reinstated to Burlington Northern Railroad Service."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

On April 16, 1984, the Carrier sent the following Notice of Investigation to the Claimant:

"Attend investigation in the Material Manager's office at Seattle, Washington, at 1:00 PM, April 23, 1984, for the purpose of ascertaining the facts and determining you (sic) responsibility in connection with your alleged failure to comply with instructions from proper authority and your alleged entering into an altercation with two (2) fellow employees on April 16, 1984, approximately 7:40 AM.

Arrange for representation and or witness as desired in accordance of governing provision of provailing schedule rules. You are being withheld from service pending further investigation.

Please acknowledge receipt by affixing your signature by the space provided on copy of this letter."

At the request of the Organization the Investigation was postponed and rescheduled on May 1, 1984. Later the Local Chairman requested another postponement. The Carrier denied that postponement and advised the Investigation would be held as scheduled. The Investigation was opened, as rescheduled on May 1, 1984, and then subsequently recessed and the Claimant was placed on a medical leave of absence.

Essentially, the basis of the request and the granting of the indefinite postponement was medical information presented on behalf of the Claimant that, prior to the incident and subsequent there to, he was under medical treatment for serious stress related emotional difficulties. The doctor stated that not only had these difficulties contributed to the incident but having to go through an Investigation put him at significant risk.

On September 21, 1984, the Claimant was notified that the Investigation would be reconvened September 27, 1984. The Investigation was then reconvened, as scheduled. Subsequently, the Carrier issued the following Notice of Discipline:

"As a result of the investigation commencing May 1 and reconvening September 27, 1984, you are hereby notified that you are being dismissed from (sic) the service of the Burlington Northern effective this date for your failure to comply with instructions from proper authority and your entering in to an altercation with two fellow employees on April 16, 1984, at approximately 7:40 A.M. The following entry is being made on your personal record:

"Dismissed from service effective October 12, 1984, for violation of the following rules:

Rule 563, that portion reading 'Burlington Northern service demands the faithful, intelligent, courteous and safe discharge of duty. Courteous, orderly conduct is required of all employees ... Employees must not enter into altercation with any person, regardless of provocation, but will make note of the facts and report such incident in writing to their immediate supervisor.'

Rule 564, that portion reading 'Employees will not be retained in service who are careless of the safety of themselves or others ... insubordinate ... quarrelsome or otherwise vicious or who conduct themselves in such a manner that the railroad will be subjected to criticism or loss of good will.'

Rules 570, that portion reading 'Employees must comply with instructions from proper authority.'

In assessing this discipline, consideration was given to previous record."

After reviewing the record the conclusion is inescapable that the Claimant did engage in an altercation. This is inappropriate conduct deserving of significant discipline. Discharge under normal circumstances would be appropriate particularly in view of his past record.

However, these are not normal circumstances. In fact, they are quite unique and unusual. What makes this unusual is the fact that there is evidence in the record strongly suggesting that the Claimant's behavior and misconduct were medically based. It is also unusual since there is also evidence that (prior to and subsequent to the incident) he undertook sincere therapeutic efforts to resolve his medical condition. There is also evidence that many, if not all, of his fellow employees did not believe the Claimant would be unsafe to work with, including one of the employees involved in the altercation.

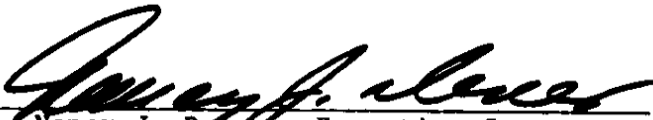
Accordingly, the Board believes the proper course of action by the Carrier would have been to allow the Claimant one last chance at continued employment upon presentation of competent medical evidence that his medical problem was under control and that he could withstand the normal rigors of employment. Therefore, the Carrier is directed to reinstate the Claimant -- without pay for time lost -- conditioned on his satisfying the Carrier's normal medical standards and procedures. In this respect, the Claimant shall sign the necessary releases so the Carrier will have all his relevant medical records at hand as part of his examination.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 27th day of October 1988.