

PUBLIC LAW BOARD NO. 1760

Award No. 154

Case No. 154
File MW-DECR-93-11

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk & Western Railway Company

Statement

of Claim: Claim on behalf of R. Comage requesting that he be reinstated to service and paid for time lost, as a result of his dismissal from all service following formal investigation held on October 19, 1993, in connection with his conduct unbecoming an employee involving a criminal charge of aggravated battery.

Findings: This Board has jurisdiction of this case by reason of the parties Agreement establishing the Board therefor.

Claimant, R. Comage, a Trackman, was off sick for several years. He returned to service therefrom and was given a physical examination as well as a background check because of his absence. That background check uncovered an incident which caused the Carrier to issue a formal notice of investigation.

The charge placed against the employee in part read:

"...your conduct unbecoming an employee in that you have been charged in the Circuit Court for the 6th Judicial Circuit of Illinois, Macon County Illinois with the offense of aggravated battery in that you stabbed Deborah Comage in the side, leg, and arm with a knife on or about March 20, 1993."

The investigation was finally held on October 19, 1993 and the Carrier concluded from the evidence adduced that the Claimant was culpable of the charges. He was dismissed from all services as discipline therefor.

Claimant was accorded the due process to which entitled under his discipline rule.

There was sufficient evidence adduced including the admissions of the Claimant, to support the conclusions of culpability of the Carrier. The Claimant had been found guilty by a jury of aggravated battery. He was sentenced on

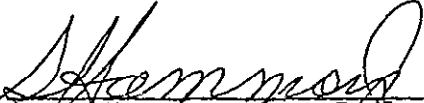
July 16, 1993 to two years probation and restitution plus court costs.

The BMW E properly raised several factors on the Claimant's behalf, i.e., that the incident did not occur while the Claimant was on duty, that there was no notoriety, nor did the employees complain that they were fearful of working with the Claimant, that the incident was not mentioned in the newspaper and the incident had no effect on the shippers, therefore, there was no harm to the Carrier's image or reputation.

Such factors cannot be given weight in light of the nature of the incident for which the Claimant was disciplined. The use of a knife as a weapon to do harm places the Carrier on notice that as an employer they hold a responsibility to all employees to provide a safe work environment. Hence, when the nature of the incident is criminal in nature, that fact must be considered in light of the Carrier responsibility to all its employees. The Claimant's previous dismissal for insubordination and threats to his supervisor, add more weight to the Carrier's problem. The Carrier would be acting less than responsible concerned were its decision to be to the contrary. The Carrier could be held liable by any employee who might be injured thereafter.

The discipline imposed in the circumstances of this case is not unreasonable. This claim will be denied.

Award: Claim denied.



S. A. Hammons, Jr., Employee Member



E. N. Jacobs, Jr., Carrier Member



Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 30, 1994.