

PUBLIC LAW BOARD NO: 1890

Award No. 40  
Case No. 40

PARTIES TO DISPUTE:

Baltimore & Ohio Railroad

and

Brotherhood of Locomotive Engineers

STATEMENT OF CLAIM:

"Reinstatement of Fireman S. D. Carter to services of the B&O Railroad, Maryland Division; Westend Seniority District; with all seniority rights unimpaired; record cleared of all charges; and pay for all time lost attending investigation, and compensation for all earnings lost due to dismissal starting December 7, 1976; reimbursement for any medical expenses or other coverage deprived of under National Group Insurance Plan GA 23000."

FINDINGS:

As a result of an altercation with another employe at Carrier's lodging facility at Brunswick, Claimant was charged with "alleged boisterous conduct and threat of endangering life." After hearing and investigation, Claimant was dismissed from Carrier's service.

After reviewing the record the Board finds that there was substantive evidence of probative value to support Carrier's determination that Claimant was culpable. However, the Board further finds that dismissal from service was excessive for the following reasons: 1) there was evidence of provocation, and 2) Claimant had an unblemished prior record. Claimant should be given "one more chance" to show that he can be a valuable employe in Carrier's service.

Accordingly, Claimant is to be reinstated with seniority unimpaired, but with no pay for time lost. Such reinstatement shall take place within 30 days from the date of this award, on the condition that Claimant satisfactorily passes the physical and the Book of Rules examinations.

AWARD

Claim disposed of per findings.

*M. Runas*  
Neutral Member

*J. J. Murphy - Dissenting*  
Carrier Member

*L. M. Moore*  
Organization Member

9-10-79  
Date