

PUBLIC      LAW      BOARD      NO.      2139

Parties: Brotherhood of Maintenance of Way Employees  
and  
Washington Terminal Company

Statement of Claim: "(1) Carrier shall reinstate George E. Thompson, who was dismissed at close of work on June 22, 1977.

(2) Discipline of dismissal is harsh and arbitrary treatment, and is unwarranted on the basis of unproven charges."

Discussion: The Claimant was an Assistant Track Foreman with almost five years seniority on the day of the incident which has already been set forth in Award No. 1.

The record indicates that he was returning from lunch at approximately 12:30 PM with Foreman Branch, Mr. Williams and Mr. Kirby. Officer Davis of the Terminal Police Department and Mr. Williams became involved in an argument and Officer Davis testified that he attempted to arrest Mr. Williams for threatening a police officer. Mr. Thompson testified that as he was returning to his work site, he heard a commotion and went back to see and hear a heated argument between Davis and Williams. Officer Davis testified that when he sought to arrest Williams he broke away, and Branch and Thompson caught him and wrestled him to the ground, but prevented him and Officer Headen, who had responded to his call for assistance, from arresting Williams.

Officer Davis also testified that the Claimant stated the police officers were not going to handcuff Mr. Williams. The Claimant denied making such a statement, averring he had only told the officers that there was no need to handcuff Williams.

The Claimant testified that when he returned to the scene of commotion, he attempted to prevent Mr. Williams from doing bodily harm to Officer Davis. He denied that he had ever pushed Officers Davis and Headen or interfered with them. When Foreman Branch and he saw what was transpiring, Mr. Branch and he went to telephone Sergeant Donovan to inform him that there was a possible confrontation between a police officer and a Terminal employee. The Claimant also testified that while he was engaged in wrestling with Mr. Williams, and Williams broke away and ran off, it is possible in the process he pushed or shoved Officer Davis. But he added he was only trying to meet his responsibilities as a foreman and restrain Williams and prevent physical harm from being done.

#### Carrier's Position

The Carrier contends that the evidence supports the Claimant's dismissal in as much as it clearly shows that the Claimant was not trying to assist the police officers but clearly interfering with these officers in the performance of their duties, by preventing them from arresting Mr. Williams, and stating that these officers were not going to handcuff Williams, and pushing the officers away when they attempted to seize and arrest Williams.

The Carrier further contended that, in any event, the Claimant showed poor judgment as a supervisor by becoming involved

in an incident that was no concern of his. He had no valid reason for interfering with police officers who were seeking to arrest an employee who had threatened a police officer. This was a serious infraction of the rules which required employees to carry out their duties and conduct themselves at all times in such a way as not to bring discredit to the Carrier.

The Carrier stressed that the totality of the Claimant's conduct fully warranted his dismissal.

#### Organization's Position

The Organization stated that the Claimant was a victim of circumstances because he was punished for trying to restrain an employee under his supervision from physically injuring a police officer. The evidence shows that the Claimant did not intend to interfere with Officer Davis, but only sought to restrain Mr. Williams in an effort to prevent physical violence from occurring. The fact that the Claimant, together with Foreman Branch, called Sergeant Donovan is evidence of his cooperation with the Carrier to act as a responsible employee.

#### Findings:

The Board, upon the whole record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the meaning of the Railway Labor Act, that the Board has jurisdiction over the dispute and that the parties were given due notice of the hearing thereon.

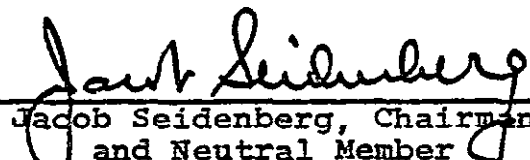
The Board finds first and foremost that the Claimant engaged in conduct that was totally impermissible and not compatible


with his role as a supervisor. The evidence is clear that his major concern was to prevent Mr. Williams from being taken into custody because he mistakingly believed, as did Foreman Branch, that Williams would be manhandled or harmed by the police officers. There is not a scintilla of evidence to support such a belief. The record is also clear that the Claimant's activities were not motivated by any concern or wish to help the police officers, who were seeking to execute the duties of their office.


The Board also finds, as stated in Award No. 1, certain mitigating factors which warrants discipline being assessed that of less than dismissal. Since the Board has found in Award No. 1 that Foreman Branch's dismissal should be converted from a dismissal into a suspension, it is appropriate that the same measure of discipline be meted out to this Claimant. The Board also incorporates the Findings of Award No. 1, insofar as relevant and material, into the Findings of this Award.

Award: Claimant restored to duty, seniority unimpaired, but with no back pay awarded.

Order: The Carrier is directed to comply with the Award, on or before December 30, 1978.

  
Jacob Seidenberg, Chairman  
and Neutral Member

  
Merrill L. Stewart,  
Carrier Member

  
Fred Wurfel, Jr.,  
Employee Member

November 30, 1978