

PUBLIC LAW BOARD NO. 2139

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

Statement of Claim: "(1) Carrier shall reinstate Gregory Williams who was dismissed from service on May 13, 1977.

(2) Discipline administered was excessive and harsh."

Discussion: The Claimant, after a duly noticed investigation, was dismissed for having in his possession, and drinking, a bottle of beer; being discourteous and disorderly in engaging in an altercation with police officers of the Washington Terminal and threatening these officers with bodily harm as well as making slanderous remarks towards his department head.

The Claimant had 17 months seniority when he was dismissed. He had previously been dismissed in August 1976 for being involved in an altercation but had been restored to service on a leniency basis.

The operative facts are that the Claimant and several fellow workers returned from lunch about 12:30 P.M. and were passing through the 2nd Street Gate. Officer Davis saw the Claimant enter with a bottle of beer. He questioned him about the bottle and the Claimant placed it on a retaining wall outside the Station. An argument developed between the Claimant and the police officer. Foreman Branch and Assistant Foreman Thompson told officer Davis that the Claimant was one of their employees and they would handle the matter. Officer Davis attempted to

arrest the Claimant when he threatened to kick the officer's black ass. The Foreman physically interfered with Officer Davis' attempt to handcuff and arrest the Claimant. The evidence adduced in Awards Nos. 1, 2 and 3 grow out of this incident, and it is incorporated by reference herein and made a part hereof.

Later, in the afternoon of day the incident occurred, the Claimant was observed at his work site. Engineer Rose and Officer Watson went to Claimant and Engineer Rose told the Claimant he was out of service and the police officer would escort him from the premises. Officer Watson testified the Claimant stated he did not have to be escorted off the property. The officer added that the Claimant uttered an obscenity to Mr. Rose. When the officer led the Claimant off the property, the officer testified that the Claimant told him he would wait for him tomorrow and that the officer would not see tomorrow. Officer Headen corroborated the testimony of Officer Watson with regard to the obscenity that the Claimant used to Engineer Rose.

Carrier's Position

The Carrier stated the evidence of record shows that the Claimant was guilty as charged. The discipline imposed was not arbitrary or unreasonable in light of the seriousness of the Claimant's offenses. Officer Davis testified, and it was not effectively rebutted, that the Claimant sought to attack him with a bottle. The Claimant resisted arrest and ran away from the officers seeking to apprehend him. When he was found working later that day, he cursed his supervisor and threatened the police officer who escorted him from the property. Officer Davis further testified that the Claimant's breath smelled of alcohol at

the time of the confrontation.

The Carrier stated the Claimant acted in such an unbecoming manner as to forfeit his right to remain in its employ. The Carrier added that it had previously restored the Claimant to service after it had discharged him for engaging in an altercation on the property. The Carrier stressed that the Claimant had not profited from his previous encounter, and it was not unreasonable for the Carrier to determine that the Claimant was not a proper employee for it to retain in its service.

Organization's Position

The Organization stated the Carrier's actions had blown the entire matter all out of proportion. Mr. Branch and Mr. Thompson told Officer Davis that they would handle the matter because they knew there were previous bad feelings between Officer Davis and the Claimant. Officer Davis insisted on confronting the Claimant, and the situation worsened. When it appeared the situation was getting out of hand, the two track supervisors subdued William, but he broke and ran away. They caught him and wrestled him to the ground. Mr. Williams calmed down and returned to work. Later Mr. Rose approached the Claimant and took him out of service and had him escorted from the property.

The Organization stressed that if Officer Davis had allowed Mr. Branch and Mr. Thompson to handle the matter as they suggested, the Claimant would have been taken to Engineer' Rose's office, and the entire situation would have been handled without the ensuing disturbance. The evidence showed that when the Claimant was told to leave the property peacefully he did so. The Organization contended that Officer Davis, over-reacted and this agitated the Claimant.

Under all these circumstances, the Organization stated the Carrier's discipline was excessively harsh and unwarranted by the facts.

Findings: The Board, under all the facts and evidence, finds that the Employee and Carrier are Employee and Carrier under the Railway Labor Act; that the Board has jurisdiction over the dispute, and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds no basis in the record to vacate or modify the discipline assessed against the Claimant. The record shows that he engaged in an altercation with Officer Davis when the latter told him it was against Company rules to bring alcoholic beverage onto the property. The Board does not find credible the Claimant's allegation that his beer bottle contained soda.

The Board finds that the Carrier was entitled to treat as credible the testimony of the police officers rather than the Claimant's self serving statements with regard to the altercation.

The record, taken as a whole, clearly shows that the Claimant persisted in a course of conduct on May 13, 1977 that took him outside the normal ambit of the employer-employee relationship, and the Board has no recourse but to deny the claim.

Award: Claim denied.

Jacob Seidenberg
Jacob Seidenberg, Chairman and Neutral Member

Merrill L. Stewart
Merrill L. Stewart, Carrier Member

Fred Wurpel, Jr.
Fred Wurpel, Jr., Employee Member

November 18, 1978