

PUBLIC LAW BOARD NO. 2206

AWARD NO. 17

CASE NO. 23

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Burlington Northern, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Laborer S. Goodman was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 15-3 MW-20, 2/28/78B)
- (2) Laborer S. Goodman be returned to service, compensated for all time lost and the dismissal be stricken from his record."

OPINION OF BOARD:

The Claimant in this case is the same individual whose thirty^{day} (30) suspension was upheld in our Award No. 16 (Case No. 22). On September 29, 1977, after the hearing which resulted in the suspension but prior to notification of that suspension, Claimant was held out of service and received Notice to attend another hearing and investigation into another set of charges as follows:

Attend investigation in the Conference Room, Freight House No. 9, 5405 West 26th Street, Cicero, Illinois, at 8:00 A.M., Thursday, October 6, 1977, for the purpose of ascertaining the facts and determining your responsibility in connection with your allegedly being quarrelsome and insubordinate and failing to comply with instructions from your Foreman at about 8:30 A.M. and 11:30 A.M. on September 29, 1977.

Arrange for representative and/or witnesses if desired in accordance with government provisions of prevailing schedule rules.

You are being withheld from service pending results of this investigation.

Following the investigation Claimant was found guilty as charged and dismissed from all service effective November 1, 1977.

On September 29, 1977 the gang on which Claimant was a Section Laborer was engaged digging jackpost holes. At about 8:30 a.m. two other Laborers were shoveling dirt which Claimant was loosening with a pickax. Claimant insists that he was working hard but the testimony of all other witnesses establishes that he was talking more than he was working. The Foreman approached and told Claimant to stop talking so much and to use the pick ax he was holding. Careful review of the record persuades us that Claimant responded in words or substance: "Get out of my face or I'll hit you with this pick". The Foreman's testimony to that effect is fully corroborated by two other employees who witnessed the confrontation. We find Claimant's version to the contrary wholly unbelievable. Nor do we find any probative evidence that Claimant was harrassed or provoked by his Foreman. Later on that morning, at approximately 11:30 a.m., Claimant and the Foreman had a conversation regarding lunch period and, according to the Foreman, Claimant stated in words or substance: "Get off my back or I'll kill you". This testimony is flatly contradicted by Claimant and there were no other witnesses. But we do not find that Carrier acted arbitrarily or unreasonably in accepting the Foreman's version, especially in light of the proven earlier threat. We find that Carrier has supported the charges against Claimant by substantial record evidence and the penalty is not disproportionate given the nature of the offense.

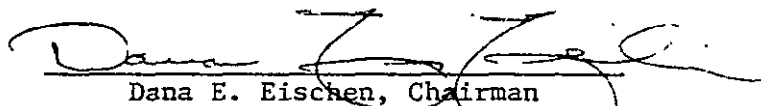
FINDINGS:

Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:


1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


F. H. Funk, Employee Member


L. K. Hall, Carrier Member

Date: Jan 8/80