

PUBLIC LAW BOARD 2206

AWARD NO. 22

CASE NO. 24

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 thirty (30) day suspension of Assistant B&B Foreman David L. Briggs effective September 7, 1977, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 15-3 MW-20 2/28/78C)
- (2) Assistant B&B Foreman David L. Briggs be compensated for all time lost and the discipline be stricken from his record."

OPINION OF THE BOARD:

At the time of the incident in question, Claimant was employed as a painter-helper in the Maintenance of Way Bridge and Building (B&B) Sub-department. He was an assistant foreman in Carrier's B&B shop at Cicero, Illinois. Shortly after commencing work on the morning of July 28, 1977, Claimant was involved in a brief verbal altercation with Water Service Mechanic D. Howard. Claimant reported the incident to his supervisor, Mr. N. Wright. Upon returning from reporting this first incident Claimant was involved in a second, and physical, altercation with Mr. Briggs. Subsequent to this altercation notice of investigation was issued to the two participants under date of July 28, 1977; such investigation to be held August 8, 1977

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"for the purpose of ascertaining the facts and determining your responsibility in connection with altercation occurring between yourselves at about 7:15 AM on July 28, 1977, at Clyde B&B Shop, Cicero, Illinois."

Subsequent to the investigation Claimant received notice dated September 6, 1977 of thirty (30) days actual suspension commencing September 7, 1977 assessed by Carrier for his part in the altercation with Mr. Howard. Water Service Mechanic Howard was also assessed thirty (30) days actual suspension; which discipline was not appealed.

The Organization initiated the instant claim on behalf of Claimant. The claim was denied at each step on the property and is now properly before the Board.

The Organization maintains that Claimant was provoked by Mr. Howard, thus his responsibility in both altercations should be mitigated by the attendant circumstances. Carrier's Safety Rule 57 is applicable here.

"Employees must not enter into altercation with any person, regardless of provocation, but will make note of the facts and report such incident in writing to their immediate superior."

The Organization further argues that Supervisor Wright could have prevented the second altercation "had he taken appropriate action when the matter was brought to his attention."

Based upon the record and transcript before us we find that Claimant was not without responsibility in contributing to the second "scuffle" with Mr. Howard. Instead of avoiding Howard after reporting the incident, Claimant taunted him again. Further, even if, arguendo, Supervisor Wright might have handled the situation differently, his action, or lack thereof, does not excuse Claimant's involvement in the incident at issue.

In light of the above we find that Carrier's assessment of thirty (30) days actual suspension was neither arbitrary nor unreasonable. Accordingly, the claim is denied.

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


L. K. Hall, Carrier Member


F. H. Funk, Employee Member

Date: July 15, 1980

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