

PUBLIC LAW BOARD NO. 2206

AWARD NO. 36

CASE NO. 46

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 Sectionman Gary P. Ovnan by letter dated October 6, 1978, to be effective August 22, 1978, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File T-W-138C)
- (2) That Gary P. Ovnan now be compensated for all time lost and be reinstated with all seniority rights unimpaired.

OPINION OF BOARD:

In August 1978 Claimant, an eleven-year employee, was working as a Sectionman under the supervision of Foreman Morris. On August 22, 1978 Ovnan was assigned to the task of cutting rail with a rail-cutting saw. After Claimant had broken several saw blades in that work, Morris instructed him to exchange jobs with another employee who was driving spikes with a maul. Claimant took exception to that order, stating that he did not have to take "goddamn orders" from the Foreman. When the Foreman persisted in his directions, Claimant raised the eight pound maul over his head in a threatening gesture toward Morris, who wrestled with him and took the sledge hammer away from him. According to Morris and other employees who witnessed the event, Claimant was trying to strike the Foreman with the hammer. Ovnan admits

raising the maul over his head but denies that he intended to harm the Foreman. After retrieving the hammer, Morris ordered Claimant to stop working and get in the company vehicle to await transportation back to headquarters. Claimant told the Foreman to "go to hell" but, after about one-half hour of standing around, he did get into the truck. At some point, Morris offered Ovnian an opportunity to come back to work if he would behave himself but Claimant declined and Morris took him out of service.

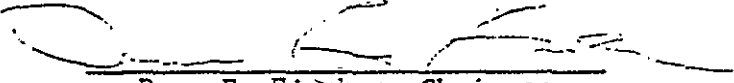
We conclude upon examination of the entire record that Carrier provided Claimant a fair and impartial investigation on September 13, 1978 at which substantial probative evidence was developed to support charges of insubordination and attempted assault upon his supervisor. We find no support for the Organization's contention that Claimant was justified in his reaction and provoked by the Foreman. Nor can we conclude that the penalty of dismissal was inappropriately harsh, given the serious nature of the proven misconduct. See Awards 2-6173; 3-22616. Leniency based upon Claimant's relatively long service was a matter which Carrier should have considered seriously but we cannot impose leniency in the facts of this case. See Awards 3-17900; 3-20236.

AWARD

Claim denied.


C. L. Melberg, Carrier Member


F. H. Funk, Employee Member


Dana E. Eischen, Chairman

Date: 9/24/81