

PUBLIC LAW BOARD NO. 2206

AWARD NO. 39

CASE NO. 49

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 Otilio Contreras December 1, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 15-3 MW-20 6/22/79).
- (2) Sectionman Otilio Contreras be reinstated with all rights unimpaired and compensated for all time lost.

OPINION OF BOARD:

Claimant was employed as a Section Laborer at Cicero, Illinois. On October 26, 1978 Claimant and another employee argued about whether Claimant was pulling his weight while moving a rail tie with tongs. Profanity was exchanged, whereupon Claimant pulled a knife and came at the other employee in a threatening manner. Claimant was taken out of service and he and the other employee subsequently were terminated following a hearing and investigation into the incident. The Organization filed the present claim on behalf of Mr. Contreras seeking reversal of the discipline on grounds of provocation and lack of intent to harm the other employee.

In handling on the property, a timely objection was filed and preserved by Carrier that the appeal was not filed within the time limits required by

Rule 42 of the Agreement. Even if arguendo, the claim had been properly joined there is no merit to the Organization's assertions that Carrier acted arbitrarily or unreasonably by suspending and then terminating an employe proven guilty of pulling a knife and threatening another employe during a verbal confrontation. The claim must be denied.

AWARD

Claim denied.

C. L. Melberg
C. L. Melberg, Carrier Member

F. H. Funk
F. H. Funk, Employe Member

Dana E. Eischen, Chairman

Date: 9/24/81

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