

PUBLIC LAW BOARD NO. 2206

AWARD NO. 42

CASE NO. 42

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 E. A. Lundquist, January 17, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File S-P-185C).
- (2) Sectionman E. A. Lundquist be reinstated with all seniority and other rights unimpaired and be compensated for all time lost.

OPINION OF BOARD:

Claimant, a Sectionman with approximately one year of actual service, was dismissed from the employment of Carrier following investigation into an incident which occurred in a Company truck on December 1, 1978. The notice of investigation, sent to Claimant and all other employees who were riding with him in the truck that day, read as follows:

You are all hereby notified in accordance with the Brotherhood of Maintenance of Way Employee's Schedule to attend investigation in the Tool House at Burlington, Washington on January 2, 1979 at 10:00 a.m., to ascertain the facts and to determine your responsibility for Eric Lundquist allegedly exposing his bare buttocks out the side window of company truck while on duty at Stanwood, Washington at about 1:00 p.m., December 1, 1978, which incident was reported to Roadmaster, J. E. Lynch, on the evening of December 18, 1978.

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

Please acknowledge receipt of this notice of investigation to Roadmaster J. E. Lynch, on copy of this letter attached.

Yours truly,

D. H. Burns
Superintendent

cc: Mr. D. D. Tulberg
Mr. R. F. Knutson
Mr. J. E. Lynch
Mr. E. H. Nelson
Mr. J. W. Carnahan

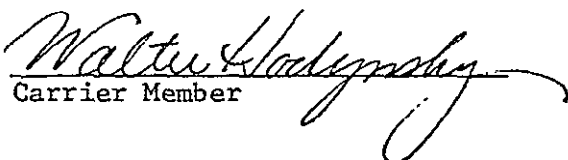
We find no probative evidence to support the Organization's assertion that the investigation was other than regular and proper. The record developed on the property demonstrates beyond reasonable debate that Claimant did drop his trousers, climb upon the seat of the truck, and stick his bare buttocks out of the window of a Company vehicle as it passed through the streets of Stanwood, Washington at about 1:00 PM on December 1, 1978. The intended beneficiary of this gratuitous demonstration was a former Company employe known by Claimant who was standing on the street. For his proven offense, Carrier found Claimant guilty of playing practical jokes while on duty and conducting himself in a manner such as to subject the Company to criticism and loss of good will. Based upon this finding and his relatively short service, Carrier assessed the discipline of termination.

Given his bizzare and socially unacceptable conduct while traveling in a Company vehicle, we cannot find that Carrier erred in finding Claimant culpable as charged. Nor do we find any persuasive evidence to support the

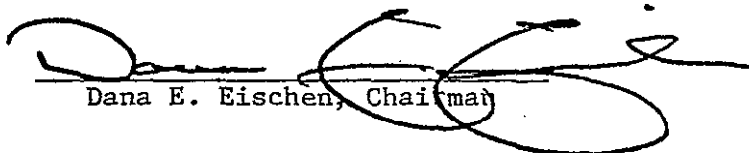
Organization's argument in mitigation that Claimant was provoked by the former employe into this action. Even if arguendo there was "bad blood" between the two men, there was no justification for Claimant's self-indulgent exhibitionism. Although we concur that termination is a harsh penalty, given Claimant's short service and the nature of his offense we cannot find that the discipline imposed by Carrier was so disproportionate as to be arbitrary or unreasonable. Such are the consequences for Claimant on the dark side of his "moon".

AWARD

Claim denied.


Carrier Member


Employee Member


Dana E. Eischen, Chairman

Date: 10/7/61