

PUBLIC LAW BOARD No. 2206

AWARD NO. 7

CASE NO. 16

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 K. T. Bartels July 5, 1977, with without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 23-3/MW-20 . 10/28/77.)
- (2) Sectionman K. T. Bartels be reinstated with all seniority and other rights unimpaired and be compensated for all time lost."

OPINION OF BOARD:

Claimant was a regularly assigned Sectionman on Carrier's Omaha, Nebraska, section, with a hiring date in June 1976. Following adequate notice and a hearing and investigation at which he appeared and was represented, Claimant was dismissed from service for insubordination and use of profane and vulgar language toward his foreman during working hours on June 28, 1977. In the instant claim the Organization seeks reversal of that discipline on the grounds of justification for the insubordination, provocation for the profanity and vulgarity, and also because Claimant allegedly was exercising his rights under Rule 25-d of the Agreement.

Turning to the last item first, we reject the Organization's interpretation that Rule 25-D gave Claimant an affirmative contractually protected right to quit working any time he believed that the weather was too inclement.

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Rule 25-D reads in pertinent part as follows:

- D. When less than eight (8) hours are worked for convenience of employees, or when regularly assigned for service of less than eight (8) hours on rest days and holiday, or when, due to inclement weather, interruptions occur to regularly established work period preventing eight (8) hours work, only actual hours worked or held on duty will be paid for except as provided in Section E of this rule.

Record evidence does show that all other employees in Claimant's gang continued working a light rain on June 28, 1977, but Claimant stopped and stood under an awning. Mr. Bartels twice flatly refused to follow his foreman's orders to return to work. There is no persuasive evidence to support Claimant's contention that he was sick. Indeed, the testimony, including his own, is just as compatible with the conclusion to avoid the discomfort of the rain and to have a snack. Willful insubordination is only one aspect of the proven charges against Claimant. The record, including his own admissions, established that Claimant called the foreman a "prick" and invited the foreman to "suck my dick", accompanying this latter invitation with an equally obscene gesture utilizing his genitals. Claimant's assertions that the foreman provoked this verbal abuse by calling him "sicky" are not corroborated by any of the other witnesses to the confrontation. A true case of provocation by a supervisor might well yield a different result, but we are not persuaded on this record that Claimant's offense was justified or in any way mitigated. Likewise, we are not prudes and we do recognize that shop talk is common, in every sense of that word, and the niceties of tea room conversation are not the norm when working men converse. But Claimant's language, attitude and action exceed all acceptable bounds even in a working environment. His insubordinate and disrespectful performance is proven on the record and we cannot find that the penalty of dismissal is arbitrary or unreasonable given the totality of his conduct. See Awards 1-12031, 2-2466, 3-16074, 3-16286, 3-16948. See

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also Award No. 3, P. L. Board No. 1850; Award No. 16, P. L. Board No. 2014.

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

Dated: 4/25/79