

Award No. 38
Case No. 75

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employes
and
Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

The dismissal of Welder Helper W. M. Thornton for alleged vicious, profane and uncivil conduct was without just and sufficient cause and excessive (Organization File 1017(35)(79); Carrier's File D-107482, E 306-14).

FINDINGS:

Claimant, a welder helper with 31 years service with Carrier, was dismissed as the result of an incident that occurred on August 22, 1979.

Claimant was working with Welders Halford and Hawkins at the time in question; they were engaged in grinding Field Welds on the Main Line. In the course of a dispute that arose as to whether the grinding on the Weld had been completed, claimant called Welder Hawkins a "damn liar." Mr. Hawkins replied that claimant was a "damn liar" if he said that it had been completed. Claimant thereupon approached Hawkins with closed fists and began swinging at him. He was restrained by Welder Halford but after Halford released him, claimant picked up a "flatter" and threatened

to hit Welder Hawkins in the head with it.

The evidence supports Carrier's conclusion that claimant engaged in serious misconduct. If claimant had a valid complaint to register, orderly avenues were available to him for processing it. It plainly was a flagrant breach of his obligations as an employee to take matters into his own hands and to attack and threaten with physical harm a welder under whom he was working at the time. There is evidence in the record that he and another employee were suspended on two prior occasions -- in December 1977 and December 1978 -- for failing to work together and carry out work assignments in the Welding Subdepartment.

We can appreciate Carrier's concerns in this matter. Beset by a host of difficult operational problems, it should not have to be confronted in addition with an attack on a welder by a welder helper in the course of a work assignment. While dismissal might well be warranted in this setting, there being no question but that claimant was the aggressor and had insufficient provocation for his actions, we are persuaded that he should be given one more opportunity to demonstrate that the length of time out of service has produced a desired change in his attitude toward Company rules governing his conduct and that he be reinstated without back pay.

Reinstatement, however, will be subject to the following conditions:

1. He will be restored to service as a Rank 6 employee and be in a probationary status for a period of one year from the date of reinstatement.

2. After satisfactorily completing the probationary

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period, as a Rank 6 employee, welder helper seniority will be restored to claimant.

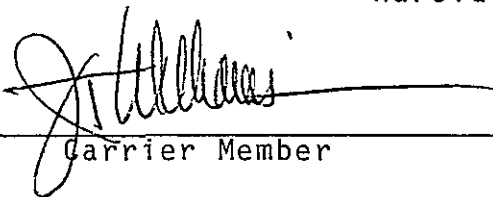
It is particularly important for claimant to show that he can be relied on to work effectively with fellow employees and supervisors. His dismissal will be upheld if there is any further misconduct on his part.

AWARD: Claimant reinstated without back pay, but subject to the conditions prescribed above in Findings. To be effective within 30 days.

Adopted at Jacksonville, Florida, April 21, 1983.



Harold M. Weston, Chairman


Carrier Member
Employee Member