

Joseph Lazar, Referee

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) and
DISPUTE) FORT WORTH AND DENVER RAILWAY COMPANY

1. That the Carrier violated the Agreement when on September 14, 1981 they dismissed Trackman V. W. Blake without just and sufficient cause.
2. That Claimant V. W. Blake be reinstated to service with seniority, vacation and all other rights unimpaired and, additionally, that he be compensated for loss of earnings account the Carrier's unjust action.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

By Notice dated September 1, 1981, Claimant V. W. Blake, a Trackman on the Fort Worth Division, was dismissed from the service of the Fort Worth and Denver Railway Company for violation of Rule(s) 57, 661, 662 and 664 of the Burlington Northern Safety Rules "in connection with an altercation involving Mr. E. F. Skinner, Machinist, and another employee in the FW&D parking lot north of Accetylene building in Childress, Texas on company property at or about 7:15 p.m., August 12, 1981 which resulted in bodily harm to Mr. E.F. Skinner, and subsequent damage to Mr. Skinner's car while Mr. Skinner was on duty as a machinist, as evidenced by a formal investigation afforded him on Monday, August 17, 1981, at Amarillo, Texas."

The Transcript of Investigation reports the following questioning by Mr. F. D. Smith, Assistant Superintendent, and answers by Claimant V. W. Blake (pp. 37-38):

- "Q. And was Mr. Skinner in or getting out of his car?
A. He was standing beside his car waiting for me to get out. He saw me.
- Q. Did you get out of your car when you drove up to Mr. Skinner's car?
A. Yes, sir.
- Q. When you got out of your car, Mr. Blake, did you have a broken pick handle or spike maul handle in your hand?
A. Yes, sir.
- Q. And what was the reason for that?
A. Because I knew he had been carrying a gun, and I wanted to talk to him. I just had it.
- Q. At the time, Mr. Blake, did you exchange conversation with Mr. Skinner?
A. Yes.
- Q. And what was the gist of the conversation?
A. He had told my girlfriend lies when he was off the parking lot, and she came and broke up with me.
- Q. What was the purpose of the handle; did you use or hit Mr. Skinner with the handle?
A. Yes, sir.
- Q. How long was the handle?
A. Two foot.
- Q. Two foot or three foot?
A. It was a Monday maul handle.
- Q. How many times did you strike Mr. Skinner?
A. One time.
- Q. One time?
A. Yes, sir.
- Q. And where was it you struck Mr. Skinner?
A. On the head.
- Q. Was there any reason for striking Mr. Skinner?
A. He said something and walked toward me. I don't know why I hit him. I was just mad. I guess that's my only reason.

"Q. When you struck Mr. Skinner, did it knock him to the ground?

A. Yes, sir.

Q. Did you hit Mr. Skinner more than once?

A. I hit him on the feet. I didn't want to hit him. I was mad. I wanted to hit his car.

Q. Did you hit his car?

A. Yes, sir.

Q. Did he ask what this was all about?

A. No, sir.

Q. Did he do any talking after you hit him?

A. Yes, sir.

Q. What did he say?

A. I can't remember."

The Transcript of Investigation reports the following questioning by Mr. F. D. Smith, Assistant Superintendent, and answers by Mr. E. F. Skinner, Machinist (pp. 25-28):

"Q. I have in my possession, Mr. Skinner, a personal injury report dated 8-13-81, signed by your name. I would like to enter into this investigation as Exhibit C. Would you state for the record, is this your handwriting and signature?

A. Yes, sir.

Q. Mr. Skinner, you stated in your personal injury report after you got out of your car, Mr. Blake got out of his car with an axe handle. Is that correct?

A. Yes, sir.

Q. And after Mr. Blake got out of his car, what did he say to you?

A. He said "Come here." I said, "What for?"

Q. And then what happened?

A. "I am going to whup your ass" as plain as that.

Q. For what reason?

A. He wouldn't tell, and I tried to get the information why he was made from him.

Q. Did he hit you with the object in his hand?

A. Yes, sir.

Q. And what was in his hand?

A. The axe handle.

Q. How long was it?

A. About 36 or 39 inches.

Q. Three feet or so?

A. Yes.

Q. Where did he hit you?

A. (Mr. Eason indicated the left side of his head and pulled back his hair to show the stitches.) And a broke foot.

Q. Did he hit you with the axe handle on the foot?

A. Yes, sir.

Q. And that broke your foot?

A. Yes, sir. It's a fracture, not a complete break.

Q. During the time Mr. Blake was hitting you, what did you do?

A. Tried to get away from him.

Q. Was there any words exchanged between the two of you?

A. I tried to get him to stop. That's the only thing I was saying.

Q. What was he saying?

A. Well, he said he was going to whup me every day if I filed charges.

Q. Can you state for the record, Mr. Skinner, what this was about?

A. Something that was said by a girl to him.

Q. Did you at any time, Mr. Skinner, attempt to get him to back off from hitting you?

A. Yes, sir.

Q. How many times did he hit you?

A. Four.

Q. Four times?

A. Yes.

Q. Other than your head and leg, or foot, where else did he hit you?

A. On my right leg, I have a bruise, and left shoulder.

Q. And was Mr. Blake vicious about this?

A. Yes, sir.

Q. Did he use profane language?

A. Yes, sir.

Q. What did he say?

A. "I am going to whup your ass you son-of-a-bitch."

Q. Is that what he said?

A. He said "you loud-mouth son-of-a-bitch."

Q. And what did you say back to him?

A. I wasn't really saying nothing. I was trying to get away.

Q. Were you calling him names?

A. No, sir.

Q. Were you using vulgar language to him?

A. No, sir.

Q. Do you feel in your mind that he knowingly entered the property and attacked you while you were on company property?

A. He knowingly come on the property, yes.

Q. And he attacked you?

A. Yes, sir. I was walking back to the building after lunch, and he pulled right beside me and got out of his car.

Q. What kind of car was he driving?

A. Oldsmobile Cutlass Supreme.

Q. What color?

A. Tan or light brown.

Q. Tan or light brown?

A. Uh huh.

Q. What kind of a car do you drive?

A. Toyota.

Q. Was there any damage to your car?

A. Yes, sir.

Q. What kind of damage?

A. He hit the hood with the axe handle and busted the windshield after he beat me. I was going back to the building.

Q. After he hit you, he hit you four times; is that correct?

A. Yes, sir, correct.

"Q. Are you saying you then got off the ground...I assume you were on the ground?

A. Half the time.

Q. You then got up to go to your place of employment, and he then hit your car?

A. Yes."

The Carrier found Claimant V.M. Blake to be in violation of the Carrier's Safety Rules 57, 661, 662 and 664, reading:

"57. Employees must not enter into altercation with any person, regardless of provocation, but will make note of the facts and report such incident in writing to their immediate superior."

"661. Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations."

"662. Employees who withhold information or fail to give factual report of any irregularity, accident, or violation of rules will not be retained in the service."

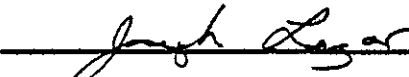
"664. Courteous, orderly conduct is required of all employees. Boisterous, profane, or vulgar language is forbidden."

The evidence of record leaves not the faintest doubt that Claimant V. M. Blake entered the Company premises with a maul handle in his possession and attacked Machinist Skinner. Machinist Skinner suffered lacerations on his scalp from being hit on the head with the handle. Skinner also suffered injuries to his foot, side and shoulder. The evidence shows that Claimant Blake "was mad". Fortunately, the "mad" attack did not result in Machinist Skinner's death. The fury of Blake's attack is shown by the damage done to Skinner's automobile by Blake after Skinner was able to withdraw.

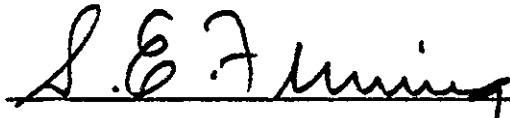
In the light of the entire evidence of record, the Carrier was fully justified in its dismissal of Claimant V. M. Blake.

A W A R D


1. The Carrier is not in violation of the Agreement.
2. The Claim is denied.



JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER



S. E. FLEMING, EMPLOYE MEMBER



B. J. MASON, CARRIER MEMBER

DATED: April 5, 1983