

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 17  
CASE NO. 18

<u>PARTIES</u>	)	BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
<u>TO</u>	)	AND
<u>DISPUTE</u>	)	BURLINGTON NORTHERN RAILROAD (Former Joint Texas Division of Chicago, Rock Island and Pacific-Fort Worth and Denver Railway)

STATEMENT  
OF CLAIM:

1. That the dismissal of Trackman L. J. Hall was without just and sufficient cause and in violation of the current Agreement, said action being unduly harsh, excessive and in abuse of discretion.
2. That Claimant shall be restored to his former position with the Carrier with seniority and all other rights restored unimpaired and that he receive compensation for all wage loss suffered as a result of his wrongful dismissal.

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 employe and Carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Claimant L. J. Hall was employed as a Trackman working on Extra Gang #1 in the vicinity of Teague, Texas. He was an employee of the Carrier since November 5, 1981, working primarily as a Track Laborer in the area of Teague and Fort Worth, Texas. On December 15, 1983, the Carrier dismissed Claimant from its service, writing him: "Effective this date you are hereby dismissed from the services of the Burlington Northern Railroad Company for violation of Safety Rules and General Rules 19, 563 and 564 in connection with an altercation between you and Trackman B. R. High, while working on Extra Gang #1 at east switch of Teague Yard at about 2:45 PM on November 23, 1983, as evidenced by a formal investigation afforded you on December 6, 1983 at Teague, Texas."

Burlington Northern Safety Rules 563, 564, and General Rule 19 read as follows:

"563. Burlington Northern service demands the faithful, intelligent, courteous and safe discharge of duty. Courteous, orderly conduct is required of all employees. Boisterous, profane, sexist or vulgar language is forbidden. 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 supervisor."

"564. 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 conduct themselves in such a manner that the railroad will be subjected to criticism and loss of good will."

"19. Scuffling, horseplay, practical jokes, ethnic jokes, harassment and all conduct of a similar nature, either on or off duty while on company property is prohibited."

There is no dispute about the fact that Claimant engaged in an altercation with Mr. High. The testimony of seven witnesses describes the quarreling, scuffling, and fighting on duty on company property. The transcript shows the following interchange between Claimant and Mr. High: (Mr. High): "...Why did you hit me after you shook your hand in my face and then I shook my hand in your face, why did you hit me in the lip? (Claimant): The reason I hit you is when you swung at me I had a choice, duck or get hit. I dodged your lick and passed a lick back at you that hit you." (Tr., p. 52). Further, the transcript shows:

"Q. Mr. Hall, prior to the incident under investigation, in other words, on the morning of November 29, 1983 and during the day up to the time of the altercation, were you in compliance with Rule 19?

A. No, sir, I guess practical jokes involved really how it got started, joking around.

Q. Is what you are saying, what started off as a practical joke wound up as being more?

A. Yes." (Tr., p. 63)

The evidence of record is clear beyond any doubt that Claimant violated Burlington Northern Safety Rules 564, 564, and General Rule 19.

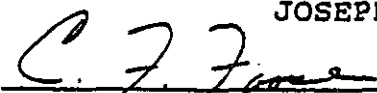
This Board, in its Award No. 7, found that "The Carrier is obligated under law to provide a safe working place for its employees. Strict compliance by the employees with the requirements of (Rule 564) and the objective enforcement of this rule by the Carrier, contribute to the security and safeguarding of the employees of the Carrier."

Every day experience teaches the simple lesson that joking and horseplay build up into quarrels and arguments which lead to emotional outbursts and fights. Reasonable employees and supervision know this and realize that it is necessary at times to calm down the persons arguing before matters get out of control, as in the instant case. Unfortunately, the calming down did not take place. The Claimant, however, must bear the consequences of his wrongful behavior. In the interest of safe and orderly conduct of railroad operations, it is necessary to uphold the discipline of Claimant. Discharge was not excessive in the circumstances of this case.

#### A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim of Trackman L. J. Hall is denied.

  
JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

  
C. F. FOOSE, EMPLOYEE MEMBER

  
H. H. PAYNE, CARRIER MEMBER

DATED: April 17, 1985