

PUBLIC LAW BOARD NO. 2774

Award No. 169
Case No. 169

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE: Atchinson Topeka & Santa Fe Railway Co.

STATEMENT
OF CLAIM:

- "1. That the Carrier's decision to dismiss Western Mine Helper Wayne Goodman from its service was in violation of the Agreement, such action being arbitrary, discriminatory, capricious and without just cause.
2. Claimant will now be restored to service of the Carrier with seniority and all other rights restored and compensated for all wage loss suffered."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that Claimant Goodman was discharged by Carrier having been found guilty of threatening his Foreman with bodily harm on May 12, 1936. Claimant, a Welder, was assisting his section Foreman on his gang on May 12 and they were working on changing out a broken rail.

The evidence at the investigation indicates that Claimant raised the subject of whether indeed his Foreman Mr. Mende had crossed the picket line in the previous week as a result of a strike of certain operating employees (UTU employees). It should be noted that Claimant was a former union official and was particularly concerned with "solidarity and union loyalty during a strike". Foreman Mende asked if it was true that the Maintenance of Way Employees had planned to strike on May 29. In the course of the discussion, Claimant asked the Foreman whether he planned to work if the Maintenance of Way Employees went on strike. According to the records, the Foreman responded that he did not plan to work if that happened but, if there was an emergency and the company asked him to work, he would do so. According to Claimant, he then told the Foreman that he or anybody else who would cross the picket line in the case of a strike by the Maintenance of Way Employees would be hurt. The testimony of the Foreman supported by the testimony of the Assistant Foreman and one of the other welders in the gang was that the Claimant told the Foreman that he had a 44 magnum pistol plus a .210 grain bullet and that if the Foreman or anybody else crossed the picket line they would be killed. Specifically, he threatened to kill the Foreman if he crossed the picket line. The discussion was rather heated and both of them were shouting at each other and the Foreman walked away, after the discussion had continued, in order to break it up.

The crux of the matter is the credibility of the witnesses at the investigation. The Hearing Officer determined that the story related by the Foreman, the Assistant Foreman and the Welder were credible and that of Mr. Goodman with respect to what he had said was not. Therefore, the Carrier determined that the conduct of Mr. Goodman on the days in question was intolerable and the decision was made that he be terminated.

The record also reveals that Mr. Goodman had a record which included a number of prior disciplines including one dismissal and a return to service by Award No. 62 of this Board, but, in that instance, with no compensation for time loss since he was found partly guilty of the charges.

It is quite clear that the threat to kill a supervisor (or any other employee) is sufficient ground for an employer to discharge an employee. That conclusion is universally accepted. In this instance, the entire matter rests on the matter of credibility. This Board has, as has been said repeatedly, no ability or jurisdiction to determine issues of credibility. That function is reserved to the Hearing Officer. In this instance, the Hearing Officer determined that the Foreman and the other two witnesses who testified in corroboration of his story were credible, and Claimant was not. Thus, Carrier's determination that Mr. Goodman was guilty was based on credible testimony and support of that

position. Procedural questions raised by the Petitioner in this matter are not supported by the record and, therefore, the claim must be denied.

AWARD

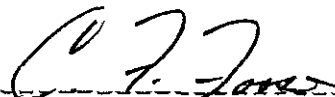
Claim denied.



I. M. Lieberman, Neutral-Chairman



G. M. Garmon
Carrier Member



C. F. Foote
Employee Member

Chicago, Illinois
June 12 1988