

NATIONAL MEDIATION BOARD

Public Law Board

No. 3063

AWARD NO. 1

PARTIES TO THE DISPUTE:

The Pittsburgh & Lake Erie Railroad and)
The Lake Erie and Eastern Railroad Companies.)

vs)

Case No. 1.

Brotherhood of Maintenance of)
Way Employees.)

STATEMENT OF CLAIM:

Claim on behalf of Gerald Hansen that he be restored to service as a Trackman and compensated for all monetary losses sustained as a result of his dismissal from the service of the Company on February 16, 1979, as a result of hearing held at Pittsburgh, Pa. March 2, 1979.

OPINION OF THE BOARD:

Mr. Gerald L. Hansen, the Claimant, entered the service of the Carrier as a Trackman on September 6, 1972, and continued in such service with a clear discipline record until February 16, 1979, when he was held out of service pending investigation. On February 20, 1979, Carrier addressed the following letter to Claimant:

"Confirming advice from your supervisor, Mr. D. E. Beissel, on February 16, 1979, you are being held out of service pending formal investigation to determine your responsibility in connection with an altercation with Foreman Emmett Pepe and Supervisor D. E. Beissel.

"Investigation will be held at 11:00 A.M. Friday, March 2, 1979, in the Office of Chief Engineer, Room 503 Terminal Building, Pittsburgh, Pa., to determine your responsibility in connection with this charge.

"Please arrange to be present at this investigation bringing with you any witnesses you may wish to be present in your behalf, at your own expense. You may arrange for representation at this investigation, subject to the terms of the applicable agreement, if you so desire."

The investigation was held as scheduled. A copy of the transcript was made a part of the record. A careful reading of the transcript and the entire record indicates Claimant was given a fair and impartial hearing. He was represented by two officers of his Organization, was given opportunity to produce witnesses in his behalf, which he chose not to do, and he and his representatives were given full opportunity to examine and cross examine Carrier's witnesses, which they did extensively.

After the investigation, on March 8, 1979, Carrier by letter formally dismissed Claimant from service.

Claim was filed in behalf of Claimant by the Organization and properly progressed through the appeals procedures of the agreement to the highest officer of the Carrier designated to handle such matters without success. Thus the dispute was submitted by mutual agreement to this Board for final and binding adjudication in accordance with Section 3, Second of the Railway Labor Act, as amended.

The dispute involves Carrier's charges that Claimant used physical force and vile profane language against his foreman, Emmett Pepe, and that he physically pushed and verbally threatened the life of Supervisor Beissel.

The record clearly shows as well as admitted by Claimant that he physically grabbed Foreman Pepe by the shoulder and called him a profane name, too vile to use in this decision. The second incident involving the physical pushing and verbally threatening Supervisor Beissel occurred in the supervisor's small office. After the first incident Foreman Pepe went to Supervisor Beissel's office and while reporting the incident, Claimant Hansen came into

the office uninvited. Beissel told the Claimant that no one was going to talk to his foreman like that and he was holding him out of service. Claimant responded by saying "no one was man enough to talk to him or go outside with him". Claimant came at Beissel and pushed him back against his chair. The record shows a "nose to nose" confrontation. Assistant Track Supervisor Vaccaro was present in the office and witnessed the altercation and so testified at the investigation. The record also clearly shows Claimant threatened Beissel's life. Local Chairman Greco came on the scene during the altercation and testified at the investigation that Claimant said, "You fire me and you wife will go to a funeral".

Claimant and his representative argued in defense that Claimant was in a highly emotional state of mind because of family problems and that he was frustrated over an unresolved grievance with his supervisors over the use of junior employees on overtime for which he contended that he should have been called. Claimant had filed a claim for the work but had not received a response as promptly as he thought he should have. This was the basis of his confrontation with Foreman Pepe.

The collective bargaining Agreement between the parties provides an effective orderly procedure for handling grievances. It includes time limits within which the parties are required to respond; the Organization forfeits the claim if it defaults, and if the Carrier defaults it must honor and pay the claim as submitted. It also provides for compulsory final and binding arbitration if the grievance is not settled by the parties, all of which is time consuming. The time consumed in progressing his

overtime claim may have frustrated Claimant 't this frustration and his emotional state of mind caused by his family problems are not justification for the physical and verbal abuse of his supervisors.

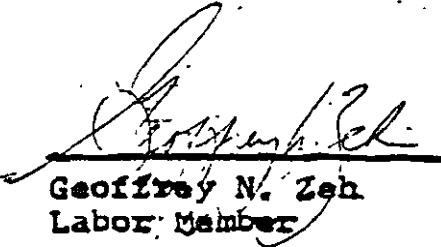
The record clearly shows Carrier proved its case.

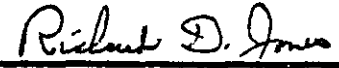
The question now to determine is does the punishment fit the crime. In this industry an employee found guilty of charges as serious as these, verbally and physically assaulting supervisors, is normally subject to permanent dismissal. But here we have an employee with a clear unblemished record who readily admitted his errors in the investigation and offered public apology to those he offended. The Board is impressed by his record and especially by the sincerity demonstrated by Claimant when he made his plea before this Board when he again offered to publicly apologize to those he offended. For these reasons the Board determines that a suspension of three years and two months is an appropriate penalty for his violative actions against his supervisors and thereby awards reinstatement with full seniority and all other rights restored. Additionally, because of the seriousness of these incidents the Board orders this decision be made a part of Claimant's personal record.

FINDINGS: In line with the above, the discipline assessed is modified from a dismissal, to discipline in the form of actual suspension from service without pay.

AWARD: Claim sustained in accordance with the above Opinion and Findings.


A. Robert Lowry
Chairman & Neutral


Geoffrey N. Zeh
Labor Member


Richard D. Jones
Carrier Member

May 14, 1982

3063-1