PUBLIC LAW BOARD NO. 3291

UNITED TRANSPORTATION UNION

VS.

MANUFACTURERS RAILWAY COMPANY

STATEMENT OF CLAIM: (Claim 11-81D) Claim of Yardman P. E. Pryor that be paid for all time and benefits lost that he would have earned on the Manufacturers Railway Company between June 1, 1981, and his date of reinstatement to service and that he be paid for attending the hearing held the afternoon of June 10, 1981 and that he be reinstated to service immediately and his record be cleared of all charges set forth in Superintendent R. L. Sheets' letter of June 3, 1981.

FINDINGS: The Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute and the parties involved herein, and the parties were given due notice of hearing.

Claimant was notified by certified mail he was ... "charged with alleged violation of Rule (n) of the 'General Rules for Employees, Manufacturers Railway Company' and misconduct as employees of Manufacturers Railway Company while members of the 3:00 PM crew of Sunday, May 31, 1981."

> Rule (n): Any act of hostility or willful disregard of the company's interests by employees is sufficient cause to render the individual subject to investigation with a view to possible suspension or dismissal.

There are many conflicting statements contained in the transcript and the record is unclear as to where the incident occurred; nonetheless the record clearly shows the claimant and his fellow crew member did engage in an altercation and both participants suffered injury. This is readily admitted by the two individuals (P. E. Pryor and T. C. Ponciroli).

There is even accord between the altercation participants as to the length of time the fray lasted. There is no dispute as to the physical injury that resulted therefrom.

We have given consideration to the contention that the investigation was not fairly conducted and find this to be without support.

The employee representatives objected to removal of claimants from service pending investigation; historically, this has been an acceptable practice under the Railway Labor Act procedures, especially when the incident deals with brawling, or other acts of unacceptable decorum.

Under these circumstances, the question is whether permanent discharge is justified. At the time of the incident the record reflects that both claimants had less than three (3) years service as railroaders on this carrier; a short period of experience by industry standards.

In light of all the evidence and review of the whole record, the Board feels claimant should be returned to service with an opportunity to prove he can perform his duties without further misconduct.

AWARD: Claimant shall be reinstated without back pay and no loss of seniority. This award shall be made forthwith from the date hereof.

C. A. Peacock

C. A. Peacock, Neutral Member

Elton D. Harris - Dissenting

E. D. Harris, Carrier Member

E. A. Thompson Jr. per ASC

E. A. Thompson, Jr., Organization Member
RESERVES RIGHT TO WRITE CONCURRING OPINION

DATE 6/6/83

DISSENT OF CARRIER MEMBER
TO AWARDS 7 AND 8 (CASE NOS. 7 AND 8)
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Carrier member is shocked, to say the least, concerning the decision made by the neutral in the above awards.

Claimants Ponciroli and Pryor are two young switchmen who, at the time, had less than three years' service with Manufacturers Railway Company. Both claimants testified at the disciplinary hearing that they had fought one another at or about 9:00 p.m. on Sunday, May 31, 1981, after they had been released from duty from their 3:00 p.m. assignment. The preponderance of evidence, including the testimony of Ponciroli, clearly showed that the fight occurred on the parking lot of Manufacturers Railway Company. Ponciroli sustained a fractured jaw and was hospitalized for four days. Pryor sustained contusions and abrasions. Both claimants testified at the disciplinary hearing that they had fought one another in front of Ponciroli's home about one month prior to the incident that occurred on May 31, 1981. Both claimants were withheld from service pending the hearing. Subsequent to the disciplinary hearing, they were found guilty and discharged from the services of Manufacturers Railway Company.

Claimants testified and admitted that they had fought each other on two different occasions. The neutral indicates that both participants suffered injury. The neutral indicates that claimants had less than three years' service and should be returned to service with an opportunity to prove that they can perform their duties "without further misconduct." The fact that the claimants had less than three years of service and were not long-time employees of the Railway should have in itself caused the neutral to deny the claim.

An interesting article appeared on May 25, 1983, in the Post-Dispatch newspaper in St. Louis, Missouri. The article in question states, in brief, that

the Missouri Court of Appeals has ruled that the victim's parents can sue Monsanto Chemical Co. The court said that an employer may be held liable for negligent hiring or retention of an employee if the employer knew or should have known of the employee's "dangerous proclivities."

The neutral, by the above awards, has now required that Manufacturers Railway Company retain two employees in its employ even though the two employees' "dangerous proclivities" are known. If the two employees have another fight and it occurs on Manufacturers Railway Company's property, will the union be liable for injuries sustained by the employees? Will the neutral be liable for injuries that may be sustained by the employees? Obviously, the answer is no; Manufacturers Railway Company will be responsible as a result of the neutral's erroneous awards. The awards should be disregarded and considered invalid.

St. Louis, Missouri
June 6, 1983

Eldon D. Harris

Eldon D. Harris, Carrier Member
Public Law Board No. 3291