

PUBLIC LAW BOARD 3445

Award Number: 17
Case Number: 17/18

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM:

Track Laborers, W.O. Millner, Route 8, Box 357, Martinsville, Virginia 24112 and T.W. Calloway, P.O. Box 112, Blairs, Virginia 24527, were dismissed from service for allegedly displaying conduct unbecoming an employee. Employees request they be restored to service with seniority and vacation rights unimpaired.

FINDINGS:

On February 18, 1983, Claimants were working with Rail Transposing Gang #554 at Milepost 35.8-DW near Axton, Virginia. For approximately two hours that morning, Claimants, who were working in close proximity to each other, had been discussing a sum of money that Claimant Millner owed to Claimant Calloway. Around 11:30 AM Claimant Millner made a comment about Claimant Calloway's wife. Claimant Calloway stood up, spiking hammer in hand, and

stepped toward Claimant Millner. Claimant Millner, who was also using a spiking hammer, swung his hammer at Claimant Calloway and struck him on the jaw. Claimant Calloway was, as he testified later, "stretched out," and three stitches were required to close the cut on his jaw.

As a result of this incident, Claimants were suspended from service and charged with conduct unbecoming an employee and fighting while on duty on Carrier property. A hearing was held in order to investigate the charges, and on the basis of the evidence adduced at the hearing, Carrier determined that Claimants were culpable as charged and that they should be dismissed. The Organization filed claims protesting Carrier's actions and requesting that Claimants be returned to service with seniority and other rights unimpaired and with pay for all time lost. The claims were denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

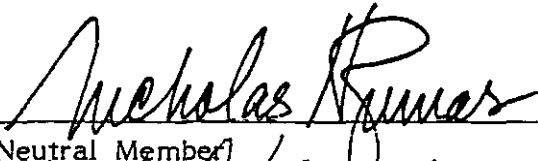
The issue to be decided in this dispute is whether Claimants were dismissed from service for just cause; and if not, what should the remedy be.

While Claimant Calloway testified that he didn't intend to threaten Claimant Millner, and Claimant Millner contends that he didn't intend to strike Claimant Calloway, the fact remains that Claimant Calloway advanced on

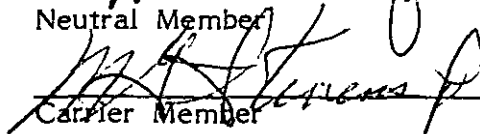
Claimant Millner holding a spiking hammer and was subsequently hit on the jaw. Such behavior constitutes fighting, and there is no question that it occurred while Claimants were on duty and on Carrier property. Likewise, employees who argue with and insult each other and brandish spiking hammers are clearly engaging in conduct unbecoming to employees. Carrier obviously has a right to discourage such behavior, if for no other purpose than to preserve the good health of its work force. It must therefore be held that Claimants were culpable as charged. However, it is the opinion of this Board that under all the circumstances, the dismissal of Claimant Calloway was overly harsh. The comment about his wife was clearly provocative, and in any event he received a rap on the jaw for his trouble. In addition, a review of Claimant Calloway's service record shows that he had only been disciplined once prior to this incident. Therefore, Claimant Calloway's dismissal shall be reduced to a lengthy suspension.

AWARD:


Claim of Claimant Millner denied. Carrier shall restore Claimant Calloway to service immediately with seniority unimpaired, but with no pay for time lost.



Neutral Member



Carrier Member



Organization Member

DATE: Nov. 13, 1974