

PUBLIC LAW BOARD NO. 3445

Award No. 29
Case No. 29

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

And

Southern Railway Company

STATEMENT OF CLAIM:

Claim on behalf of John C. Joiner and T.L. Hickman for restoration to service with seniority and other rights unimpaired and pay for all time lost as a result of their dismissal from service effective June 5, 1984 account conduct unbecoming an employee.

FINDINGS:

Claimants, by letter dated June 5, 1984, were notified to attend an investigation regarding charges that they acted with conduct unbecoming employees of the Carrier on May 31, 1984. An investigation was held on June 12, 1984. Subsequent to the investigation, Claimants were dismissed by Carrier for allegedly fighting while on duty on May 31, 1984.

The issue to be decided in this case is whether the Claimants were dismissed for just cause under the Agreement.

The position of the Carrier is that evidence produced at the hearing clearly established that Claimants were guilty of conduct unbecoming employees of Carrier and were justifiably dismissed from service.

The Carrier cites the testimony given at the hearing, alleging that the Claimants admitted fighting while on duty. The Carrier cites Claimant Joiner's testimony, where he indicated that "I was going to hit him (Hickman) and do what he was trying to do to me". The Carrier further cites Claimant Hickman's testimony where he indicated that he attempted to strike Claimant Joiner.

Additionally, the Carrier cites employee L.T. Daughtry's testimony, where he indicated that he was a witness to the fight and that both Claimants' were guilty of fighting.

The Carrier maintains that under the circumstances, dismissal was an appropriate disciplinary penalty. The Carrier cites several awards holding that fighting while on duty is an offense punishable by dismissal. The Carrier concludes that the discipline imposed was within its discretion.

The position of the Organization is that the discipline imposed by Carrier was harsh and excessive under the circumstances. The Organization admits that Claimants were guilty of fighting. However, the Organization feels that in light of Claimant Joiner's ten years and Claimant Hickman's six years of service, dismissal was an inappropriate penalty imposed by Carrier.

After review of the entire record, the Board finds that Claimant Hickman's dismissal should be reduced to a lengthy suspension, and that Claimant Joiner's dismissal was for just cause.

It is not the purpose of this Board to rehear an investigation that the Carrier held but only to determine if the dis-

cipline imposed was arbitrary, capricious, or an abuse of discretion. The Carrier has established through substantial, credible evidence that Claimants were culpable of conduct unbecoming employees on the date in question. The Claimants' testimony indicated that they engaged in an altercation while on duty. Additionally, other testimony given at the hearing established that the fight took place and that both Claimants were involved.

We agree with those awards cited by Carrier holding that fighting while on duty is an offense punishable by dismissal. Such conduct interferes with an employee's assigned duties, and reflects negatively upon Carrier. The Carrier is justified in dismissing those who behave in a manner unbecoming an employee.

Notwithstanding the above, we find that in the case of Claimant Hickman the penalty imposed was excessive. Testimony adduced at the hearing indicated that Claimant Joiner was the catalyst of the fight; and that Claimant Hickman was provoked into the altercation. While we do not condone Claimant Hickman's conduct, we feel that in light of the circumstances he should be reinstated to service. However, in light of his culpability, we do not find him entitled to compensation for time lost. While regard to Claimant Joiner, we find that the Carrier was within its discretion in dismissing him. His actions concerning the date in question were inexcusable and warranted his dismissal.

AWARD:

Claim disposed of per findings herein.

Nicholas P. Puma
Neutral Member

J. M. Miller
Carrier Member

Superior Hare
Organization Member

Date: 11/13/85