

PUBLIC LAW BOARD NUMBER 3445

Award Number: 37  
Case Number: 37

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Track Foreman, R. H. Handberry, Rt. 1, Box 10-A, Gordon, GA 31031, was dismissed from service on April 23, 1984 for alleged conduct unbecoming an employee and violating Rules G and 37-E. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request reinstatement with back pay for all lost time and all other rights unimpaired.

FINDINGS

Claimant, at the time of the dispute in question was employed by Carrier as a track foreman. by letter dated April 3, 1984, Claimant was notified to attend an investigation concerning charges that he was intoxicated while on Carrier's property and conducted himself in a manner unbecoming an employee on March 31, 1984. An investigation was held on April 9, 1984. By letter dated April 23, 1984, Claimant was dismissed from service.

The issue to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement.

The position of the Organization is that Claimant was unjustifiably dismissed on the basis of his actions on March 31, 1984. The Organization concedes that Claimant acted improperly

on that date, but maintains that his conduct did not rise to the level warranting dismissal. The Organization contends that in light of Claimant's 38 years of service for Carrier and the circumstances surrounding the incident, dismissal was an excessive penalty.

Carrier contends that Claimant was clearly guilty of conduct unbecoming an employee on the date in question. Carrier cites the testimony of several witnesses indicating that Claimant came on Carrier property wielding a knife and proceeded to threaten various employees. Carrier further cites the fact that those employees felt the situation was serious enough to call the police and that Claimant was subsequently arrested and found to be under the influence of alcohol. Finally, Carrier cites Claimant's own testimony admitting the impropriety of his behavior and the fact that he had been drinking.

Carrier additionally maintains that Claimant violated Rule 37(e), which prohibits the use of profanity while operating radio equipment. Carrier cites a transcript of a radio transmission made by Claimant on the date in question to establish that he in fact used threatening and profane language while broadcasting.

After review of the record, the Board finds that the charge should be expunged from Claimant's record.

The facts contained in the record indicate that Claimant, on May 7, 1984, retired from railroad employment. Therefore, any issue relating to reinstatement need not be considered. The facts concerning the dispute in question are basically uncontradicted. Claimant admitted that he acted in a manner unbecoming an employee on the date in question, and his admission is substantiated by several eyewitnesses. Although Claimant's behavior was abusive and threatening, we found that in light of his otherwise clean record of 38 years, the charge brought should be expunged from the record.

AWARD

Case disposed of per Findings herein.

*Nicholas Kumar*  
Neutral Member

*Michael J. [Signature]*  
Carrier Member

*Bryce L. Hall*  
Organization Member

DATE:

Oct. 1, 1987