

PUBLIC LAW BOARD NO. 3460

Award No. 41
Case No. 41

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Laborer P. J. McCarty September 11, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Laborer P. J. McCarty now be compensated for all time lost, reinstated to service with all seniority unimpaired and his record cleared."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

At the time of the incident involved in this dispute claimant was a member of a steel gang living in camp cars in the vicinity of Medora, North Dakota. By letter dated August 7, 1980, he was cited for an investigation for the purposes of "to ascertain the facts and determine your responsibility in connection with your alleged misconduct in the town of Medora, North Dakota, the evening of July 31, 1980, resulting in your arrest by local authorities and subjecting the Burlington Northern Inc. to criticism and loss of good will." Following the investigation, claimant was found guilty of the charges and dismissed from service.

Petitioner alleges, first, that claimant was not accorded a fair and impartial hearing. Additionally, according to petitioner, there is nothing in the transcript to establish that claimant had done physical harm to anyone in Medora nor tarnished Carrier's image. The Organization argues that claimant was allegedly arrested because he was drinking a can of beer in front of a bar. There is no showing,

according to petitioner, that drinking a can of beer is a violation of any ordinance. Thus, there was no showing whatever that any ordinance or law was violated by claimant and nothing to warrant the type of discipline involved herein. Petitioner argues that the discipline invoked in this instance was capricious, improper and unwarranted.

Carrier notes that in the course of the evening on July 31, 1980, claimant and several other employees from his gang, after a considerable amount of drinking, were ejected from a bar in Medora for creating a disturbance. Thereafter, the evidence indicates that the group spent a little time swinging 2 X 4's at inanimate objects "...picking up small cars and placing them on sidewalks and, in general, terrorizing the tourists and local inhabitants with such slobbish antics to the extent that local police were called to the scene." Carrier indicates further that when the police arrived at the scene claimant was propped up drinking a can of beer. An officer apprehended claimant and attempted to place him in the police car, whereupon he broke away and attempted to flee. He was recaptured and, following random acts of violence by the entire group, was ultimately taken to jail. Thereafter, Carrier notes that it received both a telephone call and follow-up letter from the Mayor of Medora complaining about the conduct of members of the gang and their "animalistic behavior". The Mayor indicated that the behavior of these employees was having a very serious impact on both local residents, businesses and tourists. The City demanded that something be done. There was also a large banner headline story in the local paper with respect to the conduct of the "railroad workers".

Carrier argues that the evidence is clear and unequivocal that the conduct of claimant was such as to subject Carrier to significant criticism and loss of good will. While understanding that the claimant was not on duty at the time of the incident, his conduct during this off-duty period clearly reflected on Carrier to a serious degree. In fact, it was necessary for Carrier to send a security officer to the town of Medora in an attempt to control the behavior of the employees. Other members of the gang did, indeed, apologize to the town for their conduct. Thus, Carrier believes that it has ample justification for its conclusion to terminate claimant.

A good portion of petitioner's argument with respect to the procedural flaws alleged at the hearing involved the documents introduced. Carrier introduced both a letter

from the Mayor to its officials, as well as a newspaper article complaining of the conduct of the gang. Petitioner objected to the introduction of the documents as being unfair and improper since they could not cross-examine the authors of the documents. The Board does not agree. In cases involving incidents impinging upon Carrier's good will and status in the community, newspaper articles and letters from public officials are perfectly proper documents to be introduced and do not as such abridge any employee's rights. While great care must be exercised in disciplining employees for off-duty conduct, in circumstances such as that described in this particular case there can be no doubt but that Carrier was directly affected by the conduct of claimant, together with that of his fellow employees. There is no question, as the Board views it, that there was substantial evidence in the transcript of the investigation to support Carrier's conclusion that the rules had been violated by claimant's conduct, Carrier had been adversely affected by the conduct and there was ample justification for its conclusion that he was guilty of the charges. From the standpoint of the discipline imposed, under all the circumstances, it should not and cannot be disturbed. The claim must be denied.

AWARD

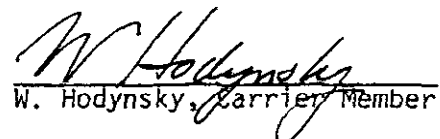
Claim denied.



I. M. Lieberman, Neutral-Chairman



F. H. Funk, Employee Member



W. Hodynsky, Carrier Member

St. Paul, Minnesota
March 13, 1986