

PUBLIC LAW BOARD NO. 3460

Award No. 51
Case No. 51

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employes
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

- "1. The dismissal of Section Laborer R. J. Spencer for alleged 'violation of Section 700 of the rules of the Maintenance of Way Department by altercation you had with your Assistant Foreman using abusive and threatening language' was without just and sufficient cause and wholly disproportionate to the charge leveled against him.
2. The claimant shall be reinstated with seniority and all other rights and benefits unimpaired and he shall be compensated for all wage loss suffered since February 1, 1981."

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.

Prior to his dismissal, claimant was a section laborer and on the morning of January 13, 1981, was assigned to work for Assistant Foreman Hallgren. Shortly after the beginning of the shift, claimant reported to Hallgren that he was sick and he was going home. The roadmaster was subsequently informed by the section foreman that claimant had told him that he had to go to see an attorney. Later, the roadmaster confronted claimant and asked him which version actually explained his absence earlier that morning. Claimant allegedly did not reply and merely walked away. Thereafter, according to the record, claimant went to the section lunchroom where he found Assistant Foreman Hallgren. According to well-corroborated testimony, undenied by claimant, claimant then raised his voice and began a hostile tirade directed at Hallgren. In the course of this tirade,

Claimant Spencer called Hallgren: "You son of a bitch f--- baby...." The tirade went on in the same vein with the same type of language. After the harangue, claimant then stated that he would take it up with the assistant foreman at 5:00 o'clock. This last comment Hallgren interpreted to be a threat of physical violence subsequent to the work day. Based on this confrontation, claimant was served with notice of a possible violation and investigation and, following an investigation, he was dismissed from service because of the harassment and altercation described above.

Carrier states that there is no question that the altercation took place and that claimant's conduct cannot be tolerated. Furthermore, in view of two prior disciplinary infractions during the previous year, dismissal was the appropriate remedy for this particular infraction. In addition, Carrier again raises the question of laches with respect to the delay in the handling of this dispute.

The Organization argues that claimant at worst exercised poor judgment in the confrontation with the assistant foreman. The language he used was not unusual in the work setting and the provocation and excitement due to what claimant felt was an improper report by the assistant foreman triggered his outburst. The Organization also argues that claimant's language in no way could be construed to be threatening. In addition, and the most significant point made by petitioner, is that the discipline assessed in this instance was clearly grossly in excess of the "crime" committed. The Organization characterizes the discipline as excessive, capricious and improper under the circumstances.

As the Board views it, the language used by petitioner in this instance was clearly beyond the acceptable, in particular since it was directed against a supervisor. While profanity may be common in the shop, you can not direct it in a threatening manner against a supervisor with impunity in any work setting. In addition, the comment with respect to forgetting about it and meeting after work can only be reasonably construed to be a threat. While this Board is reluctant to tamper with the measure of discipline imposed, it must be noted that in this particular case the measure of discipline used apparently far exceeds the infraction's seriousness. While the Board understands and recognizes the seriousness of the thinly veiled threat to the supervisor and the use of profane language, the penalty of dismissal appears to be excessive and unreasonable under all the circumstances. For that reason, the Board will order claimant reinstated to his

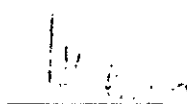
former position with all rights unimpaired but without pay for time lost.

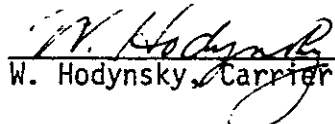
AWARD

Claim sustained in part; claimant will be reinstated to his former position with all rights unimpaired but without pay for time lost.

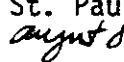
ORDER

Carrier will comply with the award herein within thirty (30) days from the date hereof.


I. M. Lieberman, Neutral-Chairman


W. Hodynsky, Carrier Member


F. H. Funk, Employee Member

St. Paul, Minnesota
, 1986