PUBLIC LAW BOARD NO. 3530

Award Number: 85
Case Number: 85

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Trackman R. A. Hilton, 1459 Lafayette Blvd., N. W., Roanoke, VA. 24017, was dismissed from service on August 29, 1986 for alleged insubordination. Claim was filed by the Employes in accordance with Railway Labor Act and agreement provisions. Employes request reinstatement with pay for all lost time with vacation and seniority rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on August 31, 1981.

By letter dated June 10, 1986, Claimant was notified to attend a formal investigation concerning charges that he was "insubordinate, verbally abusive and [made] vulgar and threatening remarks directed at Assistant Foreman L. W. Wilkerson ... in violation of ... Rule 1713." Claimant was held out of service commencing June 12. At the Carrier's direction, the investigation was twice postponed and took place August 12, 1986. By letter

dated August 29, 1986, Claimant was dismissed based on the evidence adduced at the formal investigation.

The question to be decided in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the remedy be.

On June 9, 1986, Claimant reported for duty at the section headquarters at Roanoke Terminal. Various groups of employes were preparing to be transported by the Carrier's vehicles to job sites. As Claimant entered one vehicle, he made a comment which Wilkerson asked him to repeat. Claimant delivered a tirade of vulgar names at Wilkerson. Wilkerson instructed Claimant to go to the office of the Division Engineer-Maintenance. While in the office, Assistant Terminal supervisor R. S. Brandl heard Claimant say he was "going to get him." Claimant was very upset and agitated. His fists were balled up, tears were in his eyes and he was shaking.

Rule 1713 provides that:

> 1713. Negligence in handling Company business, sleeping on duty, wilful neglect of duty, viciousness, desertion, dishonesty, insubordination, immorality, disloyalty, making false statement, or concealing facts concerning matters under investigation are sufficient cause for dismissal.
>
> An employee lying down or in a slouched position with eyes closed or with eyes covered or concealed will be considered sleeping.

The position of the Organization is that Claimant was dismissed without just cause because the formal investigation included areas of inquiry beyond

those stated in the June 10 charging letter. Specifically, the Organization objects to questions during the investigation regarding Claimant's work habits. This conduct, the Organization contends, denied the Organization proper notice of the charges and denied Claimant due process and an impartial hearing. The Organization maintains that it was unable to prepare a proper defense of Claimant and that the hearing was a "cosmetic mockery." The Organization admits that Claimant used abusive language toward Wilkerson, but contends that dismissal was an inappropriate and inconsistent punishment because there are instances in which fighting (i.e., a more serious offense) has not been punished by dismissal.

The position of the Carrier is that Claimant was proven guilty of an abusive, vulgar verbal assault on Wilkerson and a verbal threat against Wilkerson, and that dismissal is an appropriate remedy. The Carrier cites the testimony that Claimant verbally lashed out and threw his hard hat and lunch box. The Carrier contends that Claimant's behavior was not only vicious, insubordinate, disloyal and negligent, in violation of Rule 1713, but that Claimant exhibited signs of instability. The Carrier maintains further that dismissal is an appropriate discipline because Claimant's explosive, abusive and hostile behavior presents a safety hazard to his fellow employes, his supervisors and the public.

After review of the entire record, the Board finds that Claimant was dismissed for just cause under the Agreement.

The Carrier has established by substantial credible evidence in the

record that Claimant engaged in an unprovoked, abusive, vulgar tirade against Wilkerson. Claimant's throwing his hard hat and lunch box were violent and potentially dangerous. On the more serious charge of the alleged threat to Wilkerson, the Carrier has not shown that Wilkerson was the object of Claimant's hostile mutterings in the office. Nevertheless, Claimant's tirade against Wilkerson constitutes insubordination and the accompanying circumstances prove the severity of the violation of Rule 1713. Under the terms of Rule 1713, dismissal was appropriate and justifiable. The Carrier has not been arbitrary, capricious or discriminatory. Rather, it has enforced its rules in a valid effort to maintain order and a safe working environment.

As to the question of notice, the charging letter was adequate and the discussion of Claimant's work habits did not violate his due process rights. An investigation such as this one contemplates the development of some background information. The work habits inquiry was appropriate in that context.

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AWARD

Claim denied.

Nicholas Kyriacs
Neutral Member

Carrier Member

Bryce L Hall
Organization Member

Date: JUNE 12, 1989