

Parties  
to the  
Dispute

Brotherhood of Maintenance of Way Employes  
as the Representative of J. L. Guarnieri

vs.

Consolidated Rail Corporation

*Award No. 21*  
Case No. 17

STATEMENT OF CLAIM

- (a) That J. L. Guarnieri, employed April 24, 1975, be restored to service with seniority rights and all other privileges provided by either agreement or past practice. That he be compensated for all time lost until such time he is recalled to service of the railroad.
- (b) That J. L. Guarnieri's record be cleared of all charges brought against him.

OPINION OF THE BOARD

Claimant J. L. Guarnieri was a Trackman in Carrier's employ at Youngstown, Ohio. In May of 1982 Claimant was notified he was being held out of service pending an investigation of the following charges:

- (1) Violation of that portion of Rule "D" of the Rules of the Transportation Department which states: 'Any act of insubordination, hostility or willful disregard of the Company's interest will not be condoned',

in that you threatened physical harm to Foreman C. T. Bruno at approximately 3:30 PM at 'Wood' Interlocking, Homewood, PA on May 5, 1982.

- (2) Violation of that portion of Rule 'D' of the Rules of the Transportation Department which states: 'Any act of insubordination, hostility or willful disregard of the Company's interest will not be condoned', in that upon reporting an alleged personal injury to Assistant Supervisor B. M. Smythe at approximately 3:45 PM on May 6, 1982 at approximately MP 35.2, Main Line Pittsburgh to Chicago, Homewood, PA, you refused to answer any and all questions regarding the nature and extent of this alleged injury.
- (3) Violation of that portion of Rule 'D' of the Transportation Department which states: 'Any act of insubordination, hostility or willful disregard of the Company's interest will not be condoned', in that you were overheard requesting a handgun be brought to Conrail Property for the purpose of 'taking care' of three un-named Conrail employees during a telephone conversation with an unknown party at approximately 6:00 PM at St. Francis Hospital, New Castle, PA on May 6, 1982.
- (4) Attempted false reports of personal injury allegedly sustained at approximately 3:45 PM at MP 35.2, Main Line Pittsburgh to Chicago, Homewood, PA on May 6, 1982.
- (5) Violation of that portion of Rule 'D' of the Rules of the Transportation Department which states: 'Any act of insubordination, hostility or willful disregard of the Company's interest will not be condoned', in that you made a threatening phone call to the home of Foreman C. T. Bruno at approximately 2:00 AM on May 8, 1982.

- (6) Violation of that portion of Rule 'D' of the Rules of the Transportation Department which states: 'Any act of insubordination, hostility or willful disregard of the Company's interest will not be condoned', in that you made a threatening phone call to the home of Foreman D. Zappitelli at approximately 12:01 A.M. on May 18, 1982.
- (7) Violation of that portion of Rule 'D' of the Rules of the Transportation Department which states: 'Any act of insubordination, hostility of willful disregard of the Company's interest will not be condoned', in that you made a threatening phone call to the home of Trackman D. Freeman at approximately 10:30 PM on May 16, 1982.

An investigation of the charges took place on September 14, 1982. As a result of that investigation, Claimant was found guilty as charged and dismissed from Carrier's service. The transcript of the hearing has been made a part of the record of this case. That record has been reviewed by the Board and we can find no basis in it on which to overturn Carrier's determination in this case.

Carrier afforded Claimant all elements of due process and granted him the opportunity to examine and cross-examine witnesses at the hearing and to be represented by representatives of his choice. The Hearing Officer developed a complete record and thoroughly investigated each charge against Claimant. As a result of that investigation, Carrier concluded that Claimant was guilty as charged and dismissed him.

This Board has reviewed the charges and the facts pertaining to each. Carrier had sufficient evidence on which to find Claimant guilty as charged. The level of penalty imposed is all that is left for this Board to review. Carrier concluded that Claimant should be dismissed from service. It based its decision on the gravity of the charges in this instance and Claimant's past record. This Board can find no basis for upsetting that action. Claimant has a record of insubordination and aggressive behavior on the job. Carrier need not retain in its employ people with such work histories.

AWARD

The claim is denied.

*R. E. Dennis*  
 R. E. Dennis, Neutral Member

*R. O'Neil*  
 R. O'Neil, Carrier Member

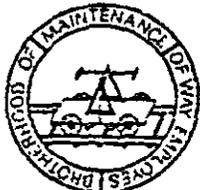
*J. Dodd*  
 J. Dodd, Employee Member  
*up dissent attached*

*July 24, 1985*  
 Date of Adoption

Pennsylvania  
Federation

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AFFILIATED WITH AFL-CIO AND CLC



CARLTON HOUSE - (OFFICE 303) - 1219 JOHN F. KENNEDY BLVD., PHILADELPHIA, PA 19103  
Area Code 215 - 569-1285 85

JED DOOD  
General Chairman

46

J.H. SINGER  
Vice Chairman - Secy. Treas.

July 24, 1985

Mr. Rodney E. Dennis, Arbitrator  
345 East 54th Street  
Suite 14 M  
New York, New York 10022

CERTIFIED NO. P 743 316 190

Re: PLB, SBA No: 3542 (Guarnieri)

Dear Mr. Dennis,

Enclosed please find a copy of my dissent in the above entitled matter.

"The decision in this case demonstrates a clear weakness in the Railway Labor Act. Under the National Labor Relations Act, a party has the right to file an "Unfair Labor Practice" charge against an employer for anti-Union animus. Under the Railway Labor Act, such matters are handled by an Arbitrator under the precedents and procedures of the National Railroad Adjustment Board and the Public Law Boards. The Carrier has disliked Claimant (who was an active President of his Lodge.) His union activities caused numerous local Company officials to dislike Claimant. He was fired once and brought back to work with a year and a half backpay. As honest observers admit, it is rare that a dismissed Claimant is restored to duty with so much backpay. The Company recognized that even though he received a large amount of backpay when he was restored to duty, they could go after him again. The Carrier concocted numerous serious charges and brought its local Supervision in to support those charges. It is beyond my comprehension how a reading of the transcript could lead to a conclusion that the Carrier met its burden of proving Mr. Guarnieri's guilt of the charges against him. The Carrier witnesses did not bring in the women who Mr. Guarnieri supposedly threatened over the phone. The Carrier witnesses did not even bring in statements by their wives (or, in the case of charge 7 the individual supposedly threatened) that Mr. Guarnieri called them and threatened them. (Charges 5, 6 and 7). These charges were just not proven. The Carrier did not prove that any false injury reports were given by Claimant (Charge 4) or that Claimant refused to answer questions regarding in an insubordinate manner regarding his May 6, 1982 injury (Charge 2.) There was disputed testimony regarding whether Claimant requested handgun be brought on the property in a phone conversation. However both individuals who were part of the conversation stated that

PAGE TWO OF TWO PAGES.

Claimant requested "Heat" in the phone conversation and this was misinterpreted by the person who overheard the phone call. In fact Claimant was brought a product to relieve back pain called "Heat" by the other individual who was on the telephone. (This resolves Charge 3). As for the interaction between Foreman Bruno and Claimant (Charge 1) the transcript is clear that Mr. Bruno misunderstood what Claimant said. The facts are clear and only Mr. Bruno misunderstood those facts and interpreted a threat being made to him by Claimant.

The Carrier is using the inability of the Board to properly handle unfair labor practices to bring about the discharge of an innocent employee. When a Carrier is permitted to get away with setting up a local lodge officer through a cynical abuse of the Railway Labor Act procedures for handling "minor disputes", the whole system is put in jeopardy. The Board's decision in this case has permitted such a cynical abuse of the procedure to occur. Local Union officers throughout the United States are undermined by this decision and the Organization dissents vigorously. This decision means that if a Carrier goes after a local representative hard enough, and uses the trial procedure to its advantage, that it can convince a neutral to uphold the dismissal of a local Union officer, even when there is insufficient evidence to sustain the dismissal.

*John Dodd*

Carriers' Concurring Opinion and Comments  
on the Employees' Dissent in Award No. 21 of  
Public Law Board No. 3542

The decision in this award to deny the claim of Trackman J. L. Guarnieri, to clear the record of all charges against him; restore him to service and compensate him for all time lost until he was restored to service by the railroad, was based on a solid review of the charges and facts pertaining to each as set forth in the investigation record. The Board was correct in its opinion that "The level of penalty imposed is all that is left for the Board to review." The Board had ample precedent for determining that Claimant should be dismissed from service. Of the legion of awards on the subject, two stand out:

Third Division Award 10113  
- Referee Daly

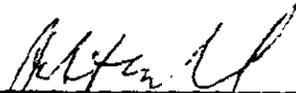
"....it is not the Board's function to resolve conflicts or discrepancies; neither is it the Board's purpose to appraise the credibility of witnesses; nor to substitute - in disciplinary matters - its judgment for that of the Carrier unless the latter's action was harsh or excessive."

First Division -  
Award 12040 - Referee Babcock

"Our function in this case is not to substitute our judgement for that of the Carrier, or to determine what we might or might not have done had the matter been ours to handle. We are entitled to set aside the Carrier's action only upon a finding that it was so clearly wrong as to constitute an abuse of discretion vested in the Carrier."

In the instant case, the Carrier's decision was neither harsh nor excessive and did not abuse the discretion vested in the Carrier. We concur with the Board's decision.

Carrier takes violent exception to the employees' defamatory statements in this dissent as they have no basis in fact. The employees are using their right to dissent as a sounding board for their own nefarious purposes when they state that the Carrier is involved in "unfair labor practices" and "cynical abuse of Railway Labor Act procedures." These allegations arise here for the first time. They are unfounded and self-serving. Therefore, they have no place before this Board and must be completely disregarded.

  
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 Robert O'Neill  
 Carrier Board Member

Parties  
to the  
Dispute

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: BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES :  
: :  
: vs. :  
: :  
: CONSOLIDATED RAIL CORPORATION :  
: :  
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Case No. 12

*Am A No. 2/a*

STATEMENT OF CLAIM

(a) That George T. Slade, employed June 1976, six years and two months, be restored to service with seniority rights and all other privileges provided for by either agreement or past practice. That he be compensated for all time lost until such time he is returned to the service of the railroad.

(b) That George T. Slade's record be cleared of all charges brought against him at this time.

OPINION OF THE BOARD

Claimant G. T. Slade was at the time of his removal from service a Trackman in Carrier's employ at Elizabethport, New Jersey. On August 18, 1982, he was notified to attend an investigation into the following charge:

Allegedly striking your Supervisor on August 16, 1982, at approximately 7:15 A.M. at Track Office, 123 Dowd Avenue, Elizabethport, N.J.

A hearing into the matter was held on September 13, 1982. The transcript of that hearing has been made a part of the record of this case. A review of the record reveals that Claimant was afforded a full and fair hearing and that he was guilty as charged. The record also reveals that to some degree the incident that is at issue in this case was not entirely Claimant's fault. His Supervisor did not have completely clean hands. He responded to Claimant's aggressiveness in a manner inconsistent with sound supervisory techniques. Since the Supervisor, by his actions, may have contributed to Claimant's inappropriate behavior, it is this Board's opinion that Claimant should be given another chance at being a Conrail employe. He should be on notice, however, that any future incidents of aggressive behavior toward Supervisors or fellow employes will result in his permanent dismissal from service.

AWARD

Claimant shall be returned to work with full seniority but without pay for lost time or benefits.

R. E. Dennis  
R. E. Dennis, Neutral Member

J. J. Dodd  
J. J. Dodd, Employee Member

R. O'Neil  
R. O'Neil, Carrier Member

1-30-86  
Date of Adoption