

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees)	
)	
and)	
)	Case No. 4
Norfolk and Western Railway)	Award No. 4
Company (Lake Region))	

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman Roosevelt Boyd for alleged altercation and conduct unbecoming to employees was without just and sufficient cause. [Organization File: MW-CGO-76-9].
- (2) Claimant Roosevelt Boyd shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered".

OPINION OF THE BOARD

Claimant was a Track Laborer in charge of tamping on the westbound main track at Calumet Yard in Chicago, Illinois on June 14, 1979 when an altercation took place between him and another employee, M. Casanova, who was a crane operator.

Carrier conducted its investigation of this incident on June 21, 1979 and sent formal notices to both Claimant

and Mr. Casanova advising them that the investigation would seek to determine responsibility in connection with the altercation "...and conduct unbecoming to employees."

As a result of the investigation, Claimant was dismissed from service with Carrier but Mr. Casanova received no discipline.

Claimant testified that Mr. Casanova's refusal to move his crane that day was preventing completion of Claimant's tamping duties. While the hearing transcript confirms that some provocation for the assault on Mr. Casanova may have existed, the fact remains that it was Casanova, not Claimant, who required medical treatment for the injuries he sustained and that two other witnesses testified that Claimant struck Casanova, whereas Claimant's testimony was that they had merely shoved each other.

Substantial evidence of Claimant's guilt was presented at the hearing which was conducted with fairness and impartiality and in accordance with the requirements of due process.

This Board cannot say that the discipline imposed was excessive, arbitrary, unreasonable or unwarranted. Claimant's resort to violence as a means of alleviating the frustration of circumstances cannot be countenanced. His dismissal is justifiable, particularly in light of his earlier fifteen day suspension for assaulting his supervisor.

In view of the foregoing, it is unnecessary to deal with Carrier's charge that the claim was not timely handled.

AWARD

Claim denied.

Eugene T. Harbert
E.T. Harbert, Neutral Member

S.C. Lyons
S.C. Lyons, Carrier Member

H.G. Harper
H.G. Harper, Employee Member

June 25, 1985