

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees	)	
	)	
and	)	Case No. 7
	)	Award No. 7
Norfolk and Western Railway Company (Lake Region)	)	
	)	

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Trackman-Truck Driver R.G. Cade for alleged insubordination was without just and sufficient cause and clearly excessive. [Organization File: MW-MUN-79-53].

(2) Claimant Cade shall now be allowed the remedy prescribed in Rule 22(e)".

OPINION OF THE BOARD

On January 3, 1983, Claimant allegedly sustained an injury in a motor vehicle accident concerning which he retained an attorney and brought suit against Carrier under the Federal Employees Liability Act.

On May 6, 1983, Claimant was summoned to a meeting with Division Engineer Cashner and certain other members of Carrier's management staff.

Claimant's alleged insubordination took place at that meeting. The transcript of the hearing, which was held on May 10 and 11, 1983, contains Mr. Cashner's narrative statement of what occurred at that meeting.

... on May 6, at Paxton, Illinois, at approximately 1:50 P.M., I had Mr. Evans bring Mr. Cade to his office, as I wished to talk to him. Mr. Cade came in. I asked Mr. Cade how he was, and advised him I would like to talk to him. His only statement was that his back was hurting, and I said what was that from, and he says "the motor car accident" and I asked him that I would like to talk to him, and he advised me that he had a lawyer and had nothing to say to me. I told him I just wanted to talk to him, and he advised me that he didn't have to talk to me and was not going to talk to me. I asked Mr. Cade if he was on company property, and he answered "yes." I asked him whether he worked for Mr. Evans, he said "yes." I asked him whether he worked for me, and he said "yes." I asked him if he was being paid at the present time and he said he was, and I advised him that since he was working for Mr. Evans and myself and was on company property and being paid by the N & W Railroad, I just wanted to talk to him, and he advised me again that he didn't have to talk to me and he wasn't going to talk to me and he wasn't going to say any more and he was leaving. He got up and started walking for the door. At that time I had asked him whether he had been hurt since the motor car accident, and he advised me, no, as he got to the door, and I said well I would just like to talk to you a few minutes. He advised me he didn't have to talk to me and wasn't going to. I asked him what time it was, and he said 2:00 P.M., and I told him if he refused to talk to me he was out of service as of 2:00 P.M. on May 6, for insubordination, and as I was stating that remark, he walked out of the door and left.

Thereafter, Mr. Evans, another member of Carrier's management staff, who was also present at the meeting, gave his version of what took place.

Mr. Cashner asked me to bring Ron Cade in, he wanted to talk to him. I went out to the truck and got Ronnie, and he came in the door and he was offered a seat and Mr. Cashner said hello, how are you, and Ronnie said my back hurts. Mr. Cade said is that from....

Q. Excuse me, Mr. Cade or Mr. Cashner?

A. Mr. Cashner. And Ronnie said it's always hurt, ever since, and Mr. Cashner asked him another question, and Ronnie said I don't have to answer your questions, he's got a lawyer, he doesn't have to answer his questions. And it went on and he said well I just want to talk to you, and Ronnie said I don't have to, I am not going to talk to you, and Mr. Cashner asked if he knowed who he was, and he said yes, and he knowed who I was, yes, if he had worked for the railroad, and Mr. Cade said yes, if he was drawing wages, and he said yes, and Ronnie said he wasn't going to answer no more questions, and got up and started to leave, and Mr. Cashner asked him if he had any previous injury and he said no, I'm not going to answer no more questions, and started out the door, and then that's when Mr. Cashner said at 2:00 today you are taken out of service for insubordination.

Claimant testified that he intended no insubordination but refused to continue to talk to Mr. Cashner because he believed he was being questioned with regard to the accident of January 3, a subject which his attorney had warned him not to discuss.

Mr. Cashner testified that the reason he called the meeting was to discuss an injury to Claimant that had been

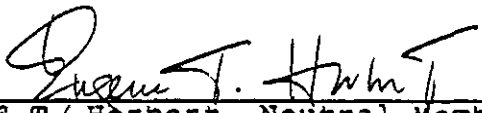
"rumored" to have occurred subsequent to the accident of January 3. No evidence of such an injury or of such a rumor was presented at the hearing.

Based on the testimony of Carrier's witnesses, there is no evidence of insubordination here. The Board is of the opinion that Claimant's refusal to continue the discussion with Mr. Cashner was based on his not unreasonable belief that he was being compelled to discuss matters bearing on his suit against Carrier in the presence of a number of management personnel and without benefit of counsel.

Under the circumstances, it is unnecessary to discuss the Organization's charge of a failure of due process in this case. The Board is of the opinion that there was insubstantial evidence of Claimant's guilt.

AWARD

Claim sustained. Claimant shall be reinstated to his former position and allowed the remedy prescribed in Rule 22(e).

  
E.T. Herbert, Neutral Member

  
S.C. Lyons, Carrier Member

  
H.G. Harper, Employee Member

*Carrier Dissents to Award*

*June 25, 1985*