

PUBLIC LAW BOARD NO. 3888

Parties
to the
Dispute

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

vs.

MAINE CENTRAL RAILROAD COMPANY-PORTLAND
TERMINAL COMPANY

Case No. 1
Award No. 1

STATEMENT OF CLAIM

Claim of the Brotherhood that:

- (a) The dismissal of Track Foreman Paul F. Tracy, Jr., was arbitrary and capricious and without just and sufficient cause, based on unproven allegations, which is in violation of Article IV, Rule 22 of the collective bargaining agreement.
- (b) Claimant Paul F. Tracy, Jr., shall be reinstated without loss of compensation, including overtime, and without loss of seniority, vacation rights, insurance benefits, and any other benefits that he was entitled to and denied prior to and following May 17, 1986.

OPINION OF THE BOARD

Claimant, a Foreman, was discharged from Carriers' service on November 25, 1986, following an investigation conducted on November 17, 1986,

...to develop facts and your responsibility, if any, in conjunction with an incident which occurred at 5:45 A.M. on Wednesday, April 2, 1986, at the South Cortland Main Street Dunkin Donuts parking lot. In this incident, you allegedly struck the window of the Main Central Vehicle 109, a Chevrolet Suburban, Maine License Plate 109-029, with a club. The window was shattered and the driver, William Jordan, was cut about the face and neck.

Claimant was charged with violation of Rule 703 of the Rules of the Government of the Operating Department and Rules GR-C third paragraph, GR-D first paragraph, and GR-H fifth paragraph of the Employee Safety Rules Manual. The incident that resulted in his discharge occurred while Carriers were sustaining a strike by the Brotherhood of Maintenance of Way Employees. The driver of the Company vehicle whose window was shattered had been hired after the commencement of the strike.

Carriers' decision to terminate Claimant was appealed immediately, by mutual agreement, to Carriers' highest appellate officer and when that appeal was denied, the claim was advanced to this Board for final determination.

In brief, Carrier argues that Claimant was guilty as charged,

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that he was afforded a full, fair, and impartial hearing, and that, given the seriousness of the offense, discharge was justified and necessary. The Organization maintains that Claimant was denied a fair and impartial hearing, that there was insufficient evidence presented to support a finding of guilt, and that the charges were not sufficiently explicit so as to allow Claimant an opportunity to present a defense.

Upon a thorough review of the record of this case, including the transcript of the investigation, this Board concludes that Carriers fully met their procedural obligations in conjunction with the leveling of charges and the conduct of the hearing.

Carriers' letter of April 7, 1986 was adequately detailed to enable Claimant to prepare a proper defense. At the same time, Claimant was provided with all procedural protections in his investigation guaranteed by Agreement. We cannot conclude, however, that there was sufficient probative evidence adduced at the hearing to sustain a finding of guilt.

Carrier is correct in noting that the level of proof required to sustain a charge may differ in an administrative hearing from that required in court, but, by the same token, the burden rests with Carrier to provide sufficient evidence to support its charge. Because of the lack of availability of key witnesses, Carrier was not able to produce anyone at the investigation with a direct

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knowledge of the incident. Instead, it had to rely on reports prepared for and by the police to carry its case. Further, no one from the police directly involved in the preparation of the reports was present at the hearing.

While those reports point strongly to Claimant's culpability, Carrier is basing its entire case on hearsay documentary evidence. Such documents are given weight when used in conjunction with direct testimony, but they are not sufficient, standing alone, to support a finding of guilt where the alleged infraction warrants permanent loss of one's job.

This Board wishes to make it clear that it does not condone the type of violence evidenced here. Any employee who engages in such a practice will most assuredly be terminated in the future.

AWARD

Claim sustained. Claimant shall be returned to work with full back pay less outside earnings dating back to May 19, 1986.



C. H. Gold, Neutral Chairman



B. L. Peters, Carrier Member



W. E. LaRue, Employee Member

7/30/87

Date of Adoption