

PUBLIC LAW BOARD NO. 4104

Case No. 52

PARTIES TO DISPUTE: Brotherhood of Maintenance of
Way Employees
vs.
Burlington Northern Railroad

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The discipline (thirty (30) days suspension and disqualification as foreman) imposed upon Mr. W.A. Thorne for alleged violation of Rules 563 and 564 was unwarranted and excessive.

2. The Claimant's seniority as foreman shall be restored and unimpaired, his record shall be compensated for all wage loss suffered during his suspension and he shall be allowed the difference between what he would have received as foreman and what he was paid in a lower rated position during his disqualification period."

OPINION OF BOARD: This dispute concerns the thirty day suspension assessed Extra Gang Foreman W.A. Thorne. On July 23, 1985, Extra Gang 922 was working under the supervision of Claimant at a derailment site. At approximately 3:15 p.m., Claimant and Laborer R.D. Wilson engaged in a heated discussion which developed into a shoving confrontation. As a result of the incident, Claimant was notified to attend an investigation on July 31, 1985. By letter dated August 19, 1985, Claimant was suspended from service for thirty (30) days from July 24, 1985 to August 22, 1985 and his foreman rights revoked.

The Organization appealed Carrier's discipline of Claimant. Carrier denied the appeal. Thereafter, the claim was handled in the usual manner on the property. It is now before this Board for adjudication.

The Organization contends that the discipline imposed upon Claimant was improper. It does not dispute the fact that Claimant

and Laborer Wilson engaged in a heated discussion. However, it asserts that such incidents are of a daily occurrence in almost all of Carrier's departments. The Organization contends that there is conflicting testimony as to how Wilson ended up on the ground; it maintains that it was not proven that Claimant pushed Wilson. The Organization asserts that Claimant denied that he pushed or touched Wilson, but that he stepped backwards and fell over the rail. Under these circumstances, the Organization suggests that Claimant's conduct was free of vicious intent. Therefore, the Organization reasons that Claimant was improperly suspended. Accordingly, it asks that the claim be sustained.

Carrier, on the other hand, insists that it was justified in suspending Claimant. It maintains that testimony of Roadmaster Gorton and other gang members state that Claimant pushed Wilson's chest. It asserts that the Organization's contention that it was merely a disagreement can not be taken lightly. In the Carrier's view, such arguments and altercations are serious dismissable offenses. The fact that Wilson was not injured does not lessen the seriousness of the incident. As such, Carrier avers, Claimant was properly found guilty as charged and assessed an appropriate penalty. Carrier asks that the claim be rejected in its entirety.

A careful review of the transcript reveals that Claimant was involved in an altercation with Wilson on July 23, 1985. However, the question has arisen as to the aggressor in this dispute. We conclude that Claimant was the aggressor. This is supported by the testimony of Roadmaster Gorton and other gang members. Such

behavior can not be tolerated on Carrier property. This is even more so in his position of Foreman. Claimant is responsible for the actions and behavior of his gang members. His involvement in such an altercation does not set forth conduct that is acceptable.

As to the discipline assessed, the Board concludes that the penalty was excessive. Under the circumstances, a fifteen day suspension is justified. Accordingly, and for the foregoing reasons, the claim is sustained to the extent indicated in this Opinion.

FINDINGS: The Public Law Board No. 4104-upon the whole record and all of the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

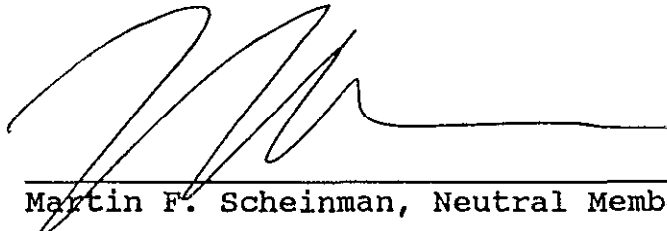
That the Public Law Board No. 4104 has the jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD: Claim sustained to the extent indicated in this Opinion.


P. Swanson, Employee Member


E. Kallinen, Carrier Member


Martin F. Scheinman, Neutral Member

9/4/90