

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 13
)	
vs)	
)	Award No. 12
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The dismissal of Section Laborer J. G. Palma for alleged "violation of Maintenance of Way Rules 700, 701(A), 701(B) and 702 for fighting and disorderly conduct" was unreasonable and excessive.
2. The Claimant shall be reinstated with seniority and all other benefits unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

On October 15, 1981 the Claimant was advised to attend an investigation to determine facts and establish responsibility, if any, in connection with his alleged fighting and disorderly conduct while on duty about 11:45 AM on October 15, 1981 at Pasco, Washington. After request for postponement the investigation was held on October 28, 1981. On November 17, 1981 the Claimant was advised that he had been found guilty as charged and he was dismissed from service. After the discipline was appealed by the Organization up to and including the highest Carrier officer designated to hear such this case has been docketed before this Public Law Board for final adjudication.

According to the record the Claimant became involved in an altercation with another Laborer at approximately 11:45 AM on the morning of October 15, 1981. During this altercation the Claimant attempted to strike his fellow employee with a two by four, and

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with his fists.

The Claimant does not deny that he attempted to strike his fellow employee. His defense rather is that he was provoked into engaging in the altercation. The allegations of provocation in the record come from the Claimant's testimony at the investigation without corroborating evidence to support such. Irrespective of the Claimant's motives, however, or the other conditions present at the time which caused him to behave as he did on the morning of October 15, 1981, such cannot be reasonable defense for his threatening behavior toward his fellow employee. Numerous arbitral forums in both the railroad industry and in other industries have precedentially held that it is inappropriate for employees to seek such potentially dangerous self-help measures in lieu of filing a grievance under the protection of their contract if they are provoked (PLB 2206, Award 23) and this Board agrees with such conclusions. There is additional precedent which holds that threatening behavior to fellow employees merits discharge (PLB 2206, Awards 32 & 39) and that Carriers are not obliged to keep in their service "...employees who engage in altercations or brawls". (Third Division 23038; also 22616; and Second Division 8481). On merits the claim cannot be sustained.

AWARD

Claim denied.


Edward L. Suntrup, Neutral Member


B. W. Potter, Carrier Member


Karl P. Knutsen, Employee Member

Date: March 9, 1987