

Public Law Board No. 4161

Parties to Dispute

Brotherhood of Maintenance of)	
Way Employees)	Case No. 3
)	
vs)	Award No. 3
)	
Burlington Northern Railroad)	

STATEMENT OF CLAIM

1. The dismissal of Section Laborer R. Frank, for alleged violation of BN Safety Rules 661 and 664 and BN Maintenance of Way Rules 701(A) and 701(B) was excessive and without just and sufficient cause.
2. The Claimant shall be reinstated with seniority and all other benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS

The Claimant was notified to attend an investigation by notice dated June 10, 1981. He was accused of participating in an altercation with another employee at approximately 7:50 AM on June 10, 1981 at the Carrier's West Seattle facilities. After the investigation was held as scheduled on June 17, 1981 the Claimant was advised that he had been found guilty as charged and he was discharged from service. This discipline was appealed on property by the Organization up to and including the highest Carrier designated to hear such before this case was docketed before this Public Law Board for final adjudication.

A review of the record shows that the Claimant was involved in an altercation with another employee, Laborer J. A. Hernandez on the day and hour in question. This is admitted by both principals to the dispute. From the evidence of record the altercation started when the two employees engaged in a spitting match which was

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started by the Claimant. Five witnesses at the investigation testified that after the disagreement between the two parties reached a certain point the Claimant drew a switchblade knife which he apparently intended to use against his fellow employee.

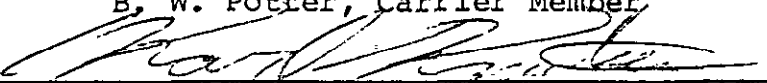
Threatening a fellow employee with a weapon has been judged to be a dischargeable offense by other arbitral forums (See Public Law Board 2206, Awards 32 and 39) and there is insufficient evidence in the instant record to warrant the conclusion that this Board should diverge from such precedent. Further, the Claimant had been disciplined before on this property for a similar incident and such past work history can serve as reasonable criterion for the quantum of discipline which results in discharge (Third Division 21043, 22320, 23508). On merits the instant claim cannot be sustained.

AWARD

Claim denied.


Edward L. Suntrup, Neutral Member


B. W. Potter, Carrier Member


Karl P. Knutsen, Employee Member

Date: January 27, 1987

