

NATIONAL MEDIATION

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PUBLIC LAW BOARD NO. 4426

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BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES

"Organization"

VS.

CENTRAL VERMONT RAILWAY, INC.
"Carrier"

Award No. 12

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) The dismissal of K. S. Poling was without just and sufficient cause based upon unproven charges in an arbitrary and capricious manner.

(b) That Kevin S. Poling shall be reinstated without loss of compensation including overtime, vacation and seniority rights and all those benefits and privileges the claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, Kevin S. Poling, entered the service of Carrier on October 4, 1988 as a Trackman. He was furloughed on December 22, 1988, and recalled to service on April 10, 1989, at which time he was assigned as a Track Machine Operator. On June 19, 1989, the date of the alleged incident giving rise to the Grievant's termination, he was working at South Windham, Connecticut. He was operating a switch tamper with a buggy attached. Gang Foreman J. O. Miller was in charge of the work site. While working, Claimant allegedly backed up his machine and derailed it, which caused damage to the machine. Shortly thereafter, Gang

Foreman Miller had Claimant use a level board to check the track. Suddenly, Claimant allegedly lifted the level board over his head and smashed it across the rail and then threw it at Miller, striking him. Claimant further allegedly threw his hard hat at Foreman Miller and attempted to punch him, but Miller moved away. Several other members of the production gang stepped in between Miller and Claimant and broke up the altercation. Miller then contacted his immediate supervisor concerning the incident. Carrier conducted an on-site investigation, after which it removed Claimant from service. On June 20, 1989, Carrier gave Claimant a notice instructing him to appear at a hearing concerning the following charges:

1. Conduct unbecoming an employee. The above charge is in connection with your allegedly being argumentative and trying to strike your foreman and also throwing your safety helmet at your supervisor on June 19, 1989 at mileage 26 Palmer Sub., while you were performing your duty as Torsion Beam Switch Tamper operator.
2. Violating rule number 11-b of CV General Rules for Employees Not Otherwise Subject to the Rules for conducting Transportation. The above charge is in connection with your alleged causing damage to rear lining buggy while operating torsion Beam Switch Tamper at mileage 26 Palmer Sub. on June 19, 1989.

The hearing was held, after which Carrier informed Claimant that he was dismissed in all capacities. Claimant then elected to use Rule 25, Section 3 of the current Agreement to place his claim directly before the Board.

Carrier maintains that Claimant's dismissal was proper in all respects. The Organization raised numerous procedural and substantive defenses on behalf of Claimant. In sum, it contended

that Claimant did not receive a fair and impartial hearing, that the testimony at the hearing did not support the charges against Claimant, and that Claimant was discharged for alleged events other than those for which he was formally charged.

The Board has determined that the claim must be denied.

While the Board agrees with the Organization that no employee may be dismissed unless there is substantial evidence in the record to support the charges, and an employee cannot be dismissed for alleged incidents other than those contained in the formal charges, in this case the Board is satisfied that there is substantial evidence in the record to support the allegations against Claimant contained in charge #1, involving the altercation with his supervisor. The Board has further determined that this conduct by the Claimant was sufficiently serious as to result in his dismissal, particularly in light of his brief seniority with the Carrier. The Carrier obviously does not have to tolerate physical assaults against its foremen. Moreover, in this case there is no evidence that Claimant's behavior was in any way provoked by the foreman.

As the Board has found that charge #1 was sufficient to justify Claimant's dismissal, there is no reason to rule as to the validity of charge #2. It suffices to say that the Organization has raised forceful arguments on behalf of the Claimant in this regard.

Accordingly, notwithstanding the Organization's skillful advocacy, Claimant's own conduct has resulted in his dismissal.

AWARD

Claim denied.

W. E. La Rue
W. E. LA RUE,
Organization Member

J. B. Ovitt
J. B. OVITT,
Carrier Member

S. E. Buchheit
S. E. BUCHHEIT,
Neutral Member