

PUBLIC LAW BOARD NO. 4426

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES

"Organization"

VS.

CENTRAL VERMONT RAILWAY, INC.

"Carrier"

Award No. 7

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

- (a) Carrier's dismissal of Claimant Thomas S. Richards was an arbitrary and capricious act, wholly beyond the scope of the Scheduled Agreement.
- (b) Claimant Richards be reinstated into Carrier's service with all seniority and be compensated for all lost wages, as provided for in Rule 27-A of the Scheduled Agreement.

OPINION OF THE BOARD

Claimant, T. S. Richards, was discharged on May 19, 1986 for allegedly violating Employee Rule #8 by possessing a rifle on the Carrier's property.

Rule #8, cited by the Carrier, states:

The use or possession of firearms or any weapon while on Company property is prohibited, except as authorized by proper authority to appropriate employees.

Upon being notified of his dismissal, the Claimant requested a hearing, which was held on June 10, 1986. On June 19, 1986,

the Carrier informed the Claimant that his dismissal had been confirmed. Appeal was made through various levels of the grievance procedure, and was declined at all levels. The hearing before this Board took place on February 29, 1988. The Claimant was informed of the hearing before this Board by certified mail, but he did not appear.

The Claimant's alleged misconduct occurred while he was participating in the picketing of the Carrier's property. This picketing resulted from a strike against Guilford Transportation Industries Railroad and resulting picketing against the Carrier. Picketing against the Carrier took place at several key points on the railway, including the area of Brigham Road Crossing in St. Albans, Vermont. This Crossing is located at the North end of Italy yard, the Carrier's main classification yard.

On May 11, 1986, M. Musitano, one of the replacement employees hired by the Carrier to maintain operations during the strike, was working as a brakeman. Musitano reported that day that at approximately 5:45 p.m., during an engine movement over Brigham Road Crossing, a picketer pointed a gun in the direction of the locomotive upon which he was working. The Carrier's Chief of Police, along with Vermont State Police, investigated the report. The State Police found a rifle on the passenger seat of the Claimant's vehicle, which was parked at or near the Brigham Road Crossing, with the barrel pointed towards the floor. Ammunition for the rifle was in a box on the floor of the car next to the rifle.

The Carrier maintains that the Claimant's vehicle was parked on company property and that the Claimant was therefore properly terminated for violation of Rule #8. The Organization maintains that the Claimant's car was not parked on company property, and that he therefore could not have been in violation of Rule #8.

This Board has determined that the claim be sustained in part.

First, it cannot be found that the Claimant pointed a rifle at the locomotive upon which Musitano was riding. As Musitano did not testify at the Claimant's hearing, there exists no credible evidence in the record to support Musitano's original report to Carrier officials. The Claimant's explanation, that he was cleaning his rifle and merely "sighted" it when he did not believe the locomotive to be present, must therefore be accepted. Perhaps from a distance Musitano saw the Claimant do this sighting and then fabricated a story about the rifle being aimed at the locomotive.

Second, the record evidence does not establish that the Claimant knowingly violated Rule #8. There exists ambiguity concerning whether the Claimant's vehicle was parked on or off company property. While the Carrier has presented evidence indicating that the Claimant's vehicle might well have been parked on company property, the lack of a clear, certain and unequivocal boundary line for the Carrier's property at the area in question lends credence to the Claimant's contention that he did not believe that he was parked on the Carrier's property.

Moreover, it is apparent that if the Claimant was parked on the Carrier's property, it was only by short distance.

Accordingly, the Claimant, an employee with a prior record of over fourteen years of unblemished service, must be restored to service with full seniority. It does not follow, however, that the Claimant was blameless in this incident. Claimant acknowledges that he was aware of the prohibition in Rule #8 against bringing firearms on the Carrier's property. Within the context of an emotional strike situation, the Claimant acted recklessly and improperly by having a rifle, complete with a box of ammunition, sitting openly on the front seat of his vehicle, parking his vehicle very near or over the Carrier's property line while on picket duty, and then "sighting" his rifle in a manner that it was apparently somehow seen by Musitano. In these circumstances, the Board has concluded that while the Organization has rescued the Claimant from discharge, his own actions preclude him from receiving back pay.

AWARD

The Carrier shall reinstate the Claimant with full seniority but without back pay.

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

J. J. Welch
J. J. WELCH,
Carrier Member 4/12/88

S. E. Buehheit
S. E. BUCHHEIT,
Neutral Member