

PUBLIC LAW BOARD NO. 4877

NATIONAL DEFLECTION
FEB 28 8 58 AM '91
ADJUS. GEN. BOARD

FRATERNAL ORDER OF POLICE

"FOP"

VS.

CONSOLIDATED RAIL CORPORATION

"CARRIER"

CASE NO. 13

AWARD NO. 6

(D. Bedra)

STATEMENT OF CLAIM

Appeal of discipline of dismissal assessed D. S. Bedra by Form G-32 dated December 1, 1989, in connection with the following:

Violation of Conrail Police Department Policy and Procedure Manual, page 0.2, paragraph 3, which reads, "Acts of misconduct or dereliction of duty, whether set forth herein or not, detrimental to the Department or Corporation will not be condoned, and offenders will be subject to disciplinary action.

Conduct unbecoming a Conrail employee, when you verbally communicated to fellow employee, Glenn B. Goss, that you were going to kill or do great bodily harm, to subordinate police officer Cynthia Miller.

This verbal communication occurred during your tour of duty between the hours of 1600 and 2400, on June 1, 1989.

OPINION OF THE BOARD

Claimant has been a Sergeant in the Toledo Division of the Carrier's police force. During his service with Carrier, which began in 1977, he has received numerous commendations and certificates of recognition from Carrier and outside law enforcement agencies. On September 1, 1989, two of Claimant's

subordinate officers, G. B. Goss and C. J. Miller, were conversing in a parking lot when Officer Goss informed Officer Miller of an alleged threat against her life which had been made by Claimant. This threat was later conveyed to Carrier officials. Goss alleged that several months earlier Claimant had made the threat, and while he was unsure at first whether Claimant was in fact serious, subsequent events established to his satisfaction that the threat was real. More specifically, during a visit to Claimant's home, Claimant allegedly showed Goss a blow dart weapon, indicating that such a weapon would accomplish the task of killing Officer Miller. Carrier subsequently removed Claimant from service and conducted an investigatory hearing. As a result of that hearing, Carrier dismissed Claimant from service. When Carrier refused to reinstate Claimant, the Organization placed the claim before this Board.

Carrier maintains as follows: Claimant's threats on the life of Officer Miller were verified through Goss, a competent eyewitness. Moreover, Goss' conclusion that the threat was serious was based on more than one conversation. Goss had no reason to fabricate false allegations against the Claimant. In addition, it is apparent that Claimant had sufficient malice towards Officer Miller to make the threat now at issue. While there is obviously a credibility conflict in the testimony concerning what occurred, it is well established that it is Carrier's prerogative to resolve such a conflict. Moreover,

threats of violence against a subordinate constitutes sufficient cause for dismissal. Finally, defenses raised by the Organization on Claimant's behalf are without merit.

The Organization asserts as follows: The Carrier's case is so anemic as to be pathetic. Carrier relies exclusively on the testimony of an individual who was under severe stress due to an unrelated but contemporaneous incident in which he used justifiable force in killing a person, and he was receiving psychological counseling throughout the time of the alleged incident. This witness, Officer Goss, himself stated on the property that he was really not sure how to take Claimant's comments; that he wasn't sure whether Claimant was joking or serious. Moreover, Officer Goss waited four months before reporting these alleged comments to anyone else. Officer Goss is not sure when the comments were made, or where they were made. He admittedly cannot quote Claimant's comments with any degree of accuracy. In short, Officer Goss' testimony is ripe with contradictions, ambiguities and questions. Moreover, Claimant was here deprived a fair and impartial hearing. Finally, even if the testimony of Goss is credited, the discipline of dismissal is inappropriate. It is overly severe for the offense. Claimant has many years of distinguished service, and there is no evidence that Claimant ever attempted to carry out any threat against Officer Miller.

The Board has determined that the claim must be sustained.

The Board is persuaded by the Organization that Carrier did

not have in its possession sufficient information to justify finding that Claimant seriously threatened the life of a fellow officer and in fact intended to kill the officer. The Organization has fully established that Officer Goss' mental state was questionable at the time he made the allegation, that he did not make the allegation against the Claimant until months after the threat was allegedly made by Claimant, that he could not recall when the threat exactly occurred, and that he could not recall the specific language of the threat. In addition, it is undisputed that Claimant has at no time attempted to carry out any physical assault against Officer Goss. Accordingly, as it has not been established that Claimant did anything wrong, he must be reinstated with full seniority, back pay and benefits lost as a result of his termination.

AWARD

Claim sustained. Carrier shall pay all money owed to Claimant within thirty (30) days of the date of this Award.


 J. H. BURTON
 CARRIER MEMBER


 E. R. FLAKE
 ORGANIZATION MEMBER


 S. E. BUEHHEIT
 NEUTRAL MEMBER

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