

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NOS. 55 and 56

System Docket Nos. BMW-377D and BMW-378D

STATEMENT OF CLAIM

Docket No. BMW-377D:

(a) Carrier's dismissal of Claimant Charles Straughter was without just and sufficient cause, was not based on any clear and probative evidence and was done in any arbitrary and capricious manner, wholly beyond the scope of the Scheduled Agreement.

(b) Claimant Straughter shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule 15 of the Scheduled Agreement.

Docket No. BMW-378D:

(a) Carrier's dismissal of Claimant Steven Robinson was without just and sufficient cause, was not based on any clear and probative evidence and was done in any arbitrary and capricious manner, wholly beyond the scope of the Scheduled Agreement.

(b) Claimant Robinson shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule 15 of the Scheduled Agreement.

FINDINGS

The Claimants were subject to a joint investigative hearing under the following Specification:

It is alleged that on Monday, November 15, 1999, between noon and 12:30 p.m., while in the lunchroom/B&B room, you exhibited discourteous and unprofessional conduct, including boisterous, intimidating, and threatening behavior while involved in an altercation (verbal) with fellow employee [the other Claimant]. It is further alleged during such altercation, you used profane and vulgar language and directed slurs of a racial nature.

Following the hearing, the Claimants were found guilty of the charges in the Specification and were dismissed from service on December 24, 1999.

Examination of the hearing record leaves no doubt that both Claimants engaged in a heated argument while together in the lunch room. This included, as charged by the Carrier, the use of vulgar and racially offensive language, with the inference that they were prepared to "go outside and settle this".

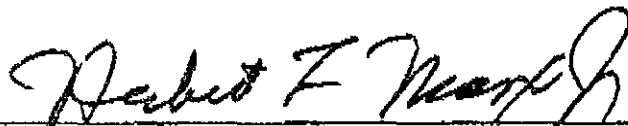
Their conduct was particularly irresponsible in that each left the room (separately), but then returned and resumed their verbal attacks on each other.

The incident could well have developed into a physical encounter; fortunately, it did not. This, however, does not mitigate the fact that this was not a quick, angry verbal exchange; rather, the disruptive conduct continued during a major part of the lunch period.

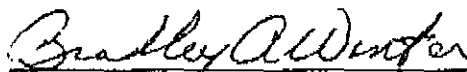
Substantial response by the Carrier is obviously warranted, both as a disciplinary penalty and as a corrective measure. The Board, however, finds that dismissal from service is too severe a penalty. The Board finds appropriate an extended disciplinary suspension, which shall be retained in the Claimants' record. From this, they must understand that any repetition of such unacceptable conduct could well lead to dismissal. The Award shall provide a disciplinary penalty of six months. The Claimants shall be offered reinstatement, with seniority unimpaired but without retroactive benefits, as of June 24, 2000.

A W A R D

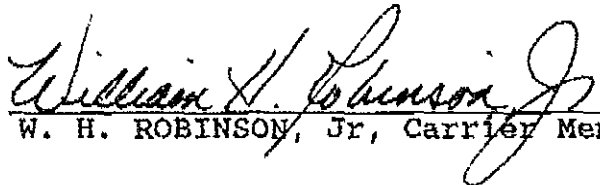
Claim sustained to the extent provided in the Findings. The Carrier is directed to make this Award effective on the date stated in the Findings.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 5/11/00