

PUBLIC LAW BOARD NO. 5664

Parties
to the
Dispute

INTERNATIONAL BROTHERHOOD OF
FIREMEN & OILERS
SYSTEM COUNCIL NO. 6

vs.

NORFOLK SOUTHERN RAILWAY
COMPANY

PLB No. 12
NMB No. 12

STATEMENT OF CLAIM

J.E.T. Hampton - Claim for reinstatement to service, and to be made whole for all time and benefits lost (plus 10% interest) in connection with formal investigation held January 9, 1995; dismissed for conduct unbecoming an employee in that on Friday, December 9, 1994, at approximately 3:05 pm at the Norris Yard Locomotive facility; Mr. Hampton made threatening remarks toward his supervisor Mr. G.L. Turner and used vulgar and profane language in his reference to Mr. Turner.

FINDINGS

Claimant Joseph Hampton was called to an investigation that was held on January 9, 1995, into the charge of conduct unbecoming an employee. Carrier alleged that on December 9, 1994, Mr. Hampton had made threatening remarks in a conversation with one

General Foreman (Loughner) in reference to another General Foreman (Turner) and had used profane and vulgar language in doing so. Following the hearing, the charge was sustained and Claimant was dismissed from service.

Carrier produced sufficient probative evidence at the hearing to support its charge. The Hearing Officer elected to credit the testimony of General Foreman Loughner that Claimant, who felt aggrieved because of the way in which his pay was handled, had stated, in reference to Mr. Turner, that if Mr. Turner was "here today, he wouldn't be here tomorrow. I'd take his mother fucking ass out." Claimant allegedly repeated this threat, using equally graphic language.

Numerous Boards in the industry have held that Hearing Officers are in the best position to weigh the credibility of witnesses, judging their demeanor as well as consistencies in their testimony. In the absence of compelling evidence to the contrary, these Boards are reluctant to second guess their judgments.

The Organization writes off Claimant's comments as nothing more than shop talk and argues that Claimant in no way acted in a threatening manner. Carrier, on the other hand, contends that it cannot afford to treat life threatening comments lightly, even if the intended "victim" is not present. It is charged with the

safety of all of its employees and must act quickly to avoid any real injury.

Carrier's vigilance was appropriate in this instance. At the same time, while Claimant's comments were clearly intemperate and totally unacceptable by any standard, regardless if one employee is referring to a coworker, or to a Supervisor, as was the case here, this Board is willing to credit the Organization's argument in Claimant's defense that no malice was involved.

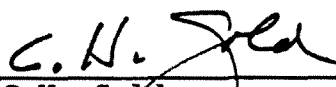
Because of all of the circumstances of this case, this Board directs that Claimant be restored to service, with the proviso that he attend and complete a counselling program approved by Management designed to deal with situations such as this.

Claimant should be made aware of the fact that there is an established procedure to handle any grievances employees may have over pay and other terms and conditions of employment. These mechanisms should be utilized. Resort to threats and the use of vulgar and profane language in the process of making such threats will not be condoned. Claimant's failure to heed this admonishment will most assuredly result in his permanent separation from service in the future.

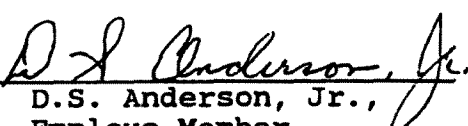
AWARD

Claim sustained in part and denied in part. Within thirty days of the approval of this Award, Claimant shall be returned to service with seniority

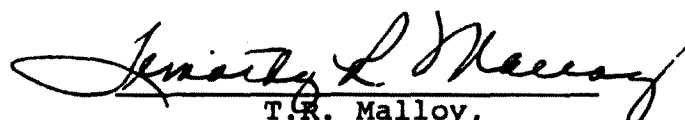
and other rights intact but without
backpay. His continued employment is
contingent upon his attending and com-
pleting a counselling program approved
by Carrier.



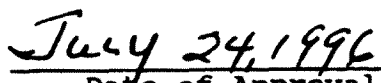
C.H. Gold,
Neutral Chairman



D.S. Anderson, Jr.,
Employee Member



T.R. Malloy,
Carrier Member



Date of Approval