

PARTIES TO DISPUTE:

(Brotherhood of Maintenance of Way Employees

(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on August 26, 1998, the Carrier dismissed Mr. J. Carrasco for allegedly violation of Rule S-1.2.9 of the Safety Rules and General Responsibilities for all Employees, and Rule 1.7 of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged involvement in an altercation at or near Spruce, Colorado, on July 16, 1998.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

This is a companion case to Case No. 100. Claimant in this case was the instigator or perpetrator of the entire incident. He was banging the pack set antenna on the head of the Claimant from Case 100, and despite the pleas to stop, he continued thinking it was funny. In fact, testimony was introduced that this type of horseplay was rather constant between the two.

As happens, and is not surprising, the perpetrator of such actions cannot, himself, "take it" when he becomes the butt of such action. In this case, the Claimant in Case 100, when his plea to cease and desist was ignored, poured pop on the head of Claimant, who in turn reacted violently, striking the other party in the face with his hard hat. In fact, he went

even further. Testimony was introduced, un rebutted, that Claimant not only struck the other with his hard hat, but spit in his face and threatened to whip his butt.

Horseplay- wrestling, alleged joking that is belittling and insulting is action the Carrier must guard against as the consequences can readily escalate to a level of violence as happened here.

Claimant was the instigator. He ignored a plea to cease and desist and even though the tormented reacted in a manner not condoned by the Carrier, there is no justification for Claimant's violent reaction.

This Board has no sympathy for such conduct. The work of the employees is strenuous enough without being impeded with such conduct. Claimant's lack of maturity, the inability to control his temper, is a situation the Carrier can cope with in only one way, and in this instance, has levied the ultimate discipline - dismissal. It will not be disturbed.


AWARD

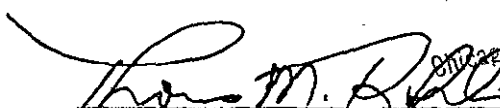
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

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Dated: March 20, 1999