

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 46

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove Western Trackman Jeffrey J. Johnson from service was unjust.
2. That the Carrier now reinstate Claimant Johnson with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of Investigation held 10:00 a.m. January 23, 1997 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, removal from service is extreme and harsh discipline under the circumstances.
3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11 because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.

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.

While loading a section of rail on December 3, a verbal altercation occurred with one employee shoving another.

After a preliminary investigation of the occurrence was completed, the Carrier believed Claimant was responsible and served him with a notice of an Investigation to establish the facts.

At the Investigation, four of Claimant's peers testified as to what occurred. Each stated Claimant was the aggressor who shoved, more than once, the truck driver while addressing the truck driver in a loud,

belligerent manner using language highly offensive when addressing a fellow employee.

Claimant's defense was that he bumped the truck driver once, but only after the truck driver bumped him. Claimant attempted to lay the blame on the truck driver, and when asked why his four working companions testified as to his aggressive behavior with the truck driver's refusal to engage, Claimant was of the opinion that the crew testified the way the Foreman wanted them to testify.

In discipline cases, the burden of supporting a decision to discipline must be established by substantial evidence. In this case, the Board finds that the evidence established was substantial and clearly supported by the testimony of four of Claimant's peers.

This may be perceived as a credibility issue with Claimant's testimony conflicting with that of others, but this Board, in its appellate form, must rely upon the findings of the Carrier officer who was at the Investigation and who witnessed the demeanor of the witnesses and listened to the tenor of their testimony.

The Carrier must provide a work place that is as safe and secure as possible, even going to the extent of removing from service employees who threaten others. No one is required to work under such circumstances. (See Case No. 38 of this Board.)

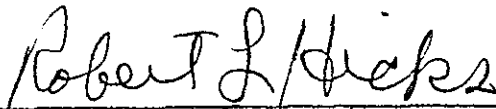
The Carrier's decision to dismiss Claimant, approximately two weeks shy of his first anniversary with the Carrier, will not be overturned or modified in any way.

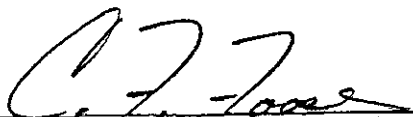
AWARD


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


C. F. Foose, Labor Member


Greg Griffin, Carrier Member

Dated