

PUBLIC LAW BOARD NO. 6221

NEW JERSEY TRANSIT RAIL OPERATIONS, INC.	:	
"Carrier"	:	Case No. 5
vs.	:	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	:	Award No. 5
"Organization"	:	
	:	(N. Wade)

IN CONNECTION WITH:

On May 19, 1999 At approximately 2:00 PM you arrived at Wayne Bus Garage and had a verbal and physical confrontation with Mr. James KWAITKOWSKY regarding a letter that he delivered to your wife earlier that day. You became verbally abusive with profanity and physically assaulted him in a manner that resulted in torn clothing and instilled fear in him. Also, you threatened that he has not seen the last of you, implying that you would return to inflict further personal harm to him. In addition, this was the second confrontation of this kind recently. You left your assigned work location without permission or notification to your foreman or supervisor. Your tour of duty is 7:30 AM to 4:00 PM. Therefore, in connection with this matter you are charged with violation of: NJ TRANSIT's Rail Employee Safety Rules TRO-5, Rule number 1, 3, 4(a)

OPINION OF THE BOARD

Carrier contends that the facts of this matter, as set forth above, establish that its actions towards Claimant were not arbitrary or capricious and that the penalty of termination was appropriate. The Organization maintains that Carrier has not proven guilt of Claimant to the charges alleged and that in any event the penalty imposed is excessive.

The Board has determined that the claim must be sustained in

part.

The Board is persuaded by Carrier that Claimant acted improperly. Claimant had no proper reason to confront Kwaitkowsky in the first place. The entire confrontation arose because Claimant attempted to confront Kwaitkowsky, the supervisor of Claimant's wife, concerning Kwaitkowsky's supposed mistreatment of her. Carrier correctly notes, however, that Claimant's recourse for the perceived mistreatment of his wife is through the Organization or administrative policies, not challenging his wife's supervisor about how he carries out his supervisory responsibilities. Moreover, the evidence is clear that Claimant's actions towards Kwaitkowsky when confronting him were inappropriate.

The Board is persuaded by the Organization, however, that the penalty of termination was excessive in this particular case. Claimant's conduct, while improper, was not so egregious as alleged by Carrier. For example, while Carrier originally charged Claimant with violation of a Rule prohibiting employees from absenting themselves from duty or engaging a substitute to perform their duties without permission of a designated officer, there was insufficient evidence to support such a finding. Moreover, Claimant's personnel file does not reflect any history of similar improper conduct towards supervisors.

In these circumstances, the Board finds that the meritorious arguments of both sides are properly balanced by reinstating the Claimant on a "last chance" basis with full seniority but without


back pay or benefits lost as a result of his termination.
Discipline shall be assessed at time served.

AWARD

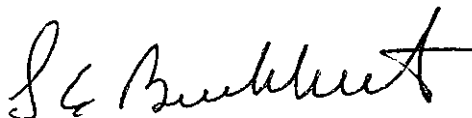
Claim sustained in part consistent with the above Opinion.



P. Charles
Carrier Member



G. J. Barbati
Organization Member



S. E. Buchheit
Neutral Member