

PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

UNION PACIFIC RAILROAD COMPANY

Case No. 21

Statement of Claim: Claim of the System Committee of the Brotherhood that:

- (1) The Union Pacific Railroad Company erred and violated the contractual rights of Tractor-Bulldozer Operator P.C. Begay when it unjustly assessed his record with a Level 5 discipline and dismissed him from service on 10/03/02, as a consequence of investigation held on 09/05/002 for being careless of the safety of fellow employee and engaging in an act of hostility.
- (2) Therefore, the Union Pacific Railroad Company:
 - (a) reinstate him to service with seniority rights unimpaired;
 - (b) all other contractual rights be restored;
 - (c) compensate him for net wage loss; and
 - (d) all charges be expunged from his record.

Background

This dismissal case stems from an incident that occurred on July 17, 2002, in which Claimant P.C. Begay allegedly engaged in hostile and menacing behavior toward three fellow employees by deliberately running his backhoe to within two to three feet of where they were standing. Specifically, the charge was that after Claimant came to a skidding stop, he got out of the backhoe and said to employees Estrada and Moran, "Don't worry guys and watch out. I was aiming at him," while pointing at co-worker Ray Williams.

A Notice of Investigation was issued on July 24, 2002, and following a hearing held on September 5, 2002, the Carrier found that Claimant (1) had been careless of the safety of others and (2) had engaged in an act of hostility, misconduct and willful disregard of fellow employees. Claimant was dismissed from employment by letter dated October 3, 2002. The Organization filed an appeal, and failing to resolve the matter with the Carrier, filed the instant claim with this Board.

Findings

A review of the testimony and evidence produced at the investigation compels the conclusion that Claimant was, in fact, guilty of engaging in threatening and hostile behavior toward fellow workers. Importantly, all three employees involved – Estrada, Moran, and Williams – gave written statements about the incident and also testified at the hearing. Claimant refused to provide a written statement. Moreover, the statements and testimony offered by Estrada, Moran, and Williams was clear, consistent, and very credible.

Essentially, the three men told the same story. Moran and Estrada were stationary when Claimant approached them in his backhoe. He was moving fast and had to slam on the brakes to avoid hitting them. After stopping just two to three feet from them, Claimant got out of the backhoe and angrily pointed to Williams, saying words to the effect: "Guys, watch out, I'm aiming for him!"

Estrada and Moran clearly were frightened, and Williams, understandably, felt that Claimant was out to hurt him. Nothing in Claimant's demeanor and behavior suggested that he was just joking. To the contrary, he was serious, hostile and menacing. Estrada,

Moran, and Williams all felt threatened with bodily harm. Estrada even testified that as he heard the backhoe skid, he "freaked out" (Tr. 94). As a result of the incident, he decided he was not going to work around Claimant anymore. (Tr. 27-30, 83).

The investigation also revealed that Ray Williams had felt threatened by Claimant even prior to the backhoe incident. According to Williams, Claimant had "went off several times on me." Williams had even spoken to Manager Battista about Claimant in the past. Supervisor Teller, the new Manager of Track Maintenance, after hearing about the backhoe incident, attempted to resolve the issues between Claimant and Williams without a formal investigation. Teller testified, however, that Claimant became irritated and uncooperative. Faced with Claimant's continuing hostility toward Williams and his unwillingness to change his attitude, the Carrier initiated the formal investigation.

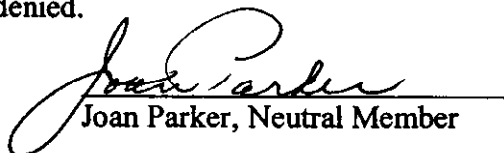
The credible evidence in the Record leaves no doubt that Claimant acted in a careless and hostile manner in violation of the Carrier's safety rules. The arbitral case law is well established: no employer may be compelled to retain an employee who threatens fellow workers with violence and/or who engages in life-threatening conduct. Claimant's careless, intimidating and unprovoked behavior toward his fellow workers, and Williams in particular, left the Carrier with little choice but to dismiss him from service.

Award

The claim is denied.


Organization Member

Dated: 12-11-03


Joan Parker, Neutral Member


Carrier Member

Dated: 12.11.03