

PUBLIC LAW BOARD NO. 6621

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE**

And

UNION PACIFIC RAILROAD COMPANY

Case No. 62

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

1. The dismissal of Trackman Edward Bindert for his alleged insubordinate, quarrelsome and discourteous behavior toward his foreman on September 28, 2005 was without just and sufficient cause, arbitrary and capricious.
2. Trackman Edward Bindert shall now be reinstated to the service of the Carrier to his former position with seniority and all other rights unimpaired, compensated for all wage and benefit loss suffered by him, and the alleged charge(s) be expunged from his personal record.

Facts

Claimant Edward Bindert, with seniority dating from September 8, 1992, was working as a trackman on System Gang 8515 when this incident occurred. On September 28, 2005, his foreman, J. R. Connolly, was discussing with Claimant his alleged failure to obey some instructions on the previous day. Claimant became very upset and told Foreman Connolly that he was “a fucking liar” and was “full of shit.” Several witnesses heard this outburst, and as a result, Claimant was instructed to report

for an investigation of the charge that he “may have become insubordinate, quarrelsome and discourteous when [he] verbally assaulted [his] foreman.”

A hearing was held on October 18, 2005, following which Claimant was found guilty of violating Rule 1.6(3), (6), and (7) – Conduct, of the Union Pacific Railroad General Code of Operating Rules. Claimant was dismissed from service by letter dated November 2, 2005.

The Organization filed an appeal on Claimant’s behalf. The appeal was processed in the customary manner and was discussed in conference. Following the Carrier’s final declination, the dispute was submitted to this Board for adjudication.

Contentions of the Parties

The Carrier contends that Claimant was properly dismissed for being insubordinate, quarrelsome, and discourteous to his foreman. In front of witnesses, Claimant verbally assaulted Foreman Connolly, who did nothing to provoke the violent outburst. Moreover, according to the Carrier, Claimant admitted that he called Foreman Connolly “a fucking liar” and told him he was “full of shit.” Given Claimant’s admission, the Carrier argues that it met its burden of proof.

In the Carrier’s view, the discipline it imposed was warranted and should not be overturned. There is substantial arbitral law, which recognizes that an employer need not condone employee behavior that is abusive and disrespectful of supervision.

The Organization contends that dismissal was too harsh a penalty because Foreman Connolly did not handle the situation well and could also “benefit from some anger management classes.” Claimant was employed for thirteen years, and during that time, had only a level two (2) discipline assessed against him. This incident was the first time

he was accused of being insubordinate, quarrelsome, or discourteous. In the Organization's view, the incident of September 28, 2005 was provoked by Foreman Connolly who threatened Claimant with level two (2) discipline for an incident on the prior day. Furthermore, while Claimant was irritated, he was not insubordinate. The entire episode was a brief and isolated event, and in the Organization's view, management grossly over-reacted when it discharged Claimant.

Opinion

While the Organization has attempted to blame Foreman Connolly for the incident of September 28, 2005, the evidence clearly established that Connolly did not abuse Claimant or lose his temper with him. Connolly was discussing Claimant's failure to obey instructions on the previous day when Claimant became very agitated and unleashed a verbal assault on his foreman. If there was provocation, it was by Claimant, not by his supervisor.

Foreman Connolly testified that Claimant told him he was "a fucking liar" and that he was "full of shit." His testimony was corroborated by Training Supervisor C.E. Wallick. Most significantly, Claimant himself admitted that he directed these curse words at his foreman:

Q. What did uh – what did you say to Mr. Connolly?

A. I told him he was a liar.

Q. Did you say uh-uh the f-word when you told him he was a liar?

A. Maybe once, yeah, you know.

Q. Did you also state to him that you thought he was full of shit?

A. Yeah, that's part of being a liar, and he was just out right lying....
(Carrier Exh. A. pp. 65-66)

Claimant did not show the slightest remorse in his testimony. He still insisted that his foreman was a liar, and he acted as if he had the right to tell his boss off if he disagreed with his instructions. No employee, however, has the right to verbally attack his superior and to undermine a supervisor's authority, particularly in front of others.

Claimant's behavior was a blatant demonstration of discourteous and quarrelsome behavior, which is prohibited by the Carrier's rules. While the Organization suggested that Foreman Connolly needed training in anger management, there is no evidence that he incited Claimant. To the contrary, Claimant resisted Connolly's authority and resented Connolly's talking to him about his conduct on the preceding day.

The Board is mindful that Claimant had thirteen years with the Carrier. But given his seniority, he should have known that the Carrier does not tolerate verbal attacks on supervision. If an employee wants to dispute a directive, the "obey now, grieve later" principle must be followed. Given that Claimant's outburst was unprovoked and clearly in violation of Rule 1.6 – Conduct (3) insubordination, (6) quarrelsome, and (7) quarrelsome, this Board has no choice but to uphold the discipline assessed.

Award

The claim is denied.

<u>W.G.R.</u> Carrier Member Dated: <u>May 7, 2007</u>	<u>Joan Parker</u> Joan Parker, Neutral Member	<u>[Signature]</u> Organization Member Dated: <u>5-7-07</u>
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