

PUBLIC LAW BOARD NO. 1844

AWARD NO. 22

CASE NO. 24

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of Way Employees

and

Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The sixty (60) day suspension of Track Walker D. J. Ball was without just and sufficient cause and disproportionate to the alleged offense. (Carrier's File D-11-8-448)
- (2) Track Walker Ball be compensated for all time lost and the matter of discipline be stricken from his record."

OPINION OF BOARD:

The facts in this discipline case are virtually uncontested. Claimant D. J. Ball was employed as a Track Walker with hours of work 7 a.m. to 3:30 p.m. At approximately 7 a.m. on the morning of August 20, 1976, he telephoned the Roadmaster's office at Crystal Lake and told his Foreman that he had missed his train from Woodstock, where he lived, to the assembly point at Crystal Lake. Since the crew was working that day at Hartland, Section Foreman Miller agreed to pick Claimant up when the work track passed through Woodstock. The Foreman did pick Claimant up at a point in Woodstock at 7:30 a.m. but declined to drive Claimant back to his house to pick up his lunch which he had forgotten. While en route to the job site the Foreman notified Claimant that he would be shown as reporting for work at 7:30 a.m. The record shows that Claimant was upset with the Foreman and Foreman Miller testified without contradiction that Claimant "called me a

few names." Claimant was reading a newspaper in the truck and upon reaching the job site he continued to read his newspaper while getting out of the truck. Foreman Miller told him once to start working and Claimant without comment continued to read his newspaper. Foreman Miller told him a second time to start working, to which Claimant responded, "Get fucked," and continued to read his newspaper. Within minutes of this encounter Foreman Miller departed to pick up another crew and Claimant still had not begun working but continued to read the newspaper.

In our judgment the factual record in this case fully substantiates the charge against Claimant that he refused to work as instructed by his supervisor. In order to prove insubordination Carrier does not in every case have to show that the employee stated in so many words, "No, I will not do the work." Certainly in this case it is demonstrated beyond cavil that Claimant responded to a reasonable order from his authorized superior with a contemptuous profanity and a failure to perform as instructed. He was not charged with profanity but his choice of language is probative of his attitude and intent to disobey the Foreman. Nor is it relevant that he put the paper down and went to work after the Foreman left. Being "a little bit insubordinate" is like being "a little bit pregnant" in that Claimant's virtuous behavior came too late to undo the damage of his intemperate conduct. With respect to the quantum of discipline imposed, our function is to determine whether the penalty imposed by Carrier is arbitrary, unreasonable or capricious in the circumstances. Using that accepted standard of judgment we are not persuaded on this record that we should modify or set aside the discipline of Claimant. This does not necessarily mean that we would have assessed the same quantum of discipline in the first instance, nor that we believe a lesser penalty would have been wholly inappropriate. But utilizing the

standards universally applied in railroad labor arbitration, we are unable to conclude that Carrier acted unreasonably with respect to the amount of discipline it imposed in this case.

FINDINGS:


Public Law Board No. 1844, upon the whole record and all of the evidence, finds and holds as follows:


1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Elschen, Chairman


O. M. Berge, Employee Member


R. W. Schmalge, Carrier Member

April 11, 1978