

PUBLIC LAW BOARD NO. 1844

AWARD NO. 44

CASE NO. 58

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 thirty (30) day suspension of Track Foreman Manuel C. Medina was without just and sufficient cause and wholly disproportionate to the alleged offense. (Carrier File D-11-17-237)
- "(2) Track Foreman Medina be compensated for all time lost and the discipline be stricken from his record."

OPINION OF BOARD:

On the night of August 30, 1977, Claimant, a Section Foreman, was performing security guard duty on Carrier's track equipment near Grand Avenue and Des Plaines Street, in Chicago. The area to which he was assigned with another employee to assist him is notoriously dangerous, with a history of vandalism. Claimant had been issued a Company radio to call for assistance if trouble occurred. At approximately 9:15 p.m. Claimant was sitting in his personal automobile watching the equipment when he saw two individuals described by him as "winos" near the equipment. He shouted for them to leave but they did not. Claimant thereupon loaded a 9-millimeter automatic pistol he had with him and loosed a volley of ten to twelve shots to "scare" the trespassers away. Mr. Medina then returned to his automobile and was listening to the baseball game, with the pistol on the seat beside him, when he was arrested by Chicago policemen

who had responded to the report of shooting in the area. Claimant and his fellow guard were arrested and booked, but subsequently bailed out by their boss, Roadmaster Larson. The police investigation revealed that the gun Claimant had fired was not registered and he did not have a license for it.

After his release on bond by the Chicago police, Claimant was interviewed by Carrier police and, on August 31, 1977, he received a Notice from the A.D.M.E. to attend an investigation into the following charge:

"Your responsibility in connection for violation of Rule No. 19 of the General Regulations and Safety Rules on August 31, 1977, 12:40 A.M., at Des Plaines and Grand Avenues, Chicago, Illinois."

Rule No. 19 referred to in the above Notice reads as follows:

"Employees are prohibited from having loaded or unloaded firearms in their possession while on duty, except those employees authorized to do so in the performance of their duties or those given special permission by the superintendent."

Following the investigation, Claimant was assessed thirty days' suspension without pay.

The record evidence is not refuted and establishes beyond cavil that Claimant violated the rule against possession of firearms while on duty. More than mere possession, he fired the gun on Company property while on duty. We do not doubt his diligence in protecting Carrier property, nor do we discount his regard for his own safety in that dangerous area. But neither of those very legitimate concerns can justify recourse to his personal arsenal. He was not under attack nor was he directly threatened, yet he resorted to potentially deadly force. Such frontier tactics could have had disastrous consequences both for himself and for his employer. Claimant testified that he was aware of the Rule, he chose to violate it, and his culpability is clear. His actions cannot be condoned or encouraged and we cannot find that the suspension imposed was arbitrary or unreasonable in the circumstances.

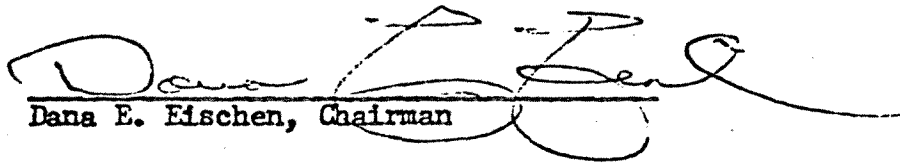
FINDINGS:

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

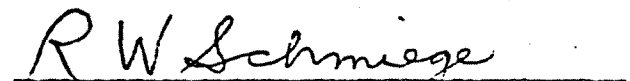
1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD

Claim denied.


Dana E. Eischen, Chairman


H. G. Harper, Employee Member


R. W. Schmiede, Carrier Member

Dated: May 17, 1979