

PUBLIC LAW BOARD NO. 5461

Case No. 14
Award No. 14

PARTIES TO DISPUTE:

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

-and-

SPRINGFIELD TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of Machinist Geoffrey Clarke for reinstatement to service with full back pay and benefits and that his record be cleared of the charges against him.

FINDINGS:

This Board upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

The Claimant was employed as a Machinist at the Springfield Terminal Railway Company's Engine House in Waterville, Maine. On December 19, 1995, at around 10:40 p.m. the Claimant was engaged in a conversation with fellow employees Chris Wentworth and Dan Reardon at the Waterville Engine House. Mr. Wentworth was telling the Claimant about a party he had been to the previous Friday. Mr. Wentworth said "there was a nude slut in the pool." The Claimant asked what her name was and Mr. Wentworth responded "Melissa." Electrician John Caswell, who was standing near Pit 8 at the time, said to the Claimant "isn't you wife's name Melissa."

The Claimant became very upset at Mr. Caswell's comment and began shouting at him. He put his hand around Mr. Caswell's throat and said "don't talk about my wife or I will kill you." Mr. Caswell took this threat seriously and reported it to a supervisor on duty at the Engine House. Mr. Caswell said he felt threatened by the Claimant. Mr. Caswell apologized to the

Claimant later that night. He insisted that he did not intend to make a derogatory comment about the Claimant's wife.

On December 27, 1995, the Claimant was notified to attend an investigation to answer charges that he physically assaulted Electrician John Caswell on December 19, 1995. The investigation was held on January 3, 1996. On January 22, 1996, the Claimant was terminated from the Carrier's service for his reputed physical assault on Mr. Caswell.

Whether the Claimant grabbed Electrician John Caswell by the throat or around the chest is in dispute. Nevertheless, he still physically assaulted his fellow employee while they were both working at the Waterville Engine House the evening of December 19, 1995. Unquestionably, this was a serious transgression by the Claimant. However, it did not appear to be a premeditated act of violence on his part. Rather, it was an emotional response to what he perceived was an affront to his wife by Mr. Caswell. At the January 3, 1996 investigation the Claimant acknowledged that his response to Mr. Caswell was improper.

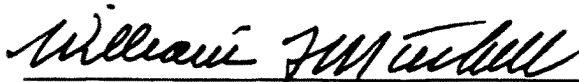
The Claimant's physical assault of fellow employee John Caswell while they were both on duty at the Waterville Engine House was clearly unacceptable behavior. Yet, in view of the mitigating circumstances present on December 19, 1995, his termination was excessive, in this Board's opinion. There is no evidence in the record before this Board that the Claimant is a violent or obstreperous individual. He merely overreacted to what he thought was a personal insult to his wife. The Claimant must therefore be reinstated to service with his seniority restored. However, because of the gravity of the Claimant's misconduct he is not entitled to any back pay or benefits.

AWARD: Claim sustained to the extent indicated in the Findings.

Carrier is directed to make the within Award effective on or before thirty (30) days from the date hereof.



Robert M. O'Brien, Neutral Member



William F. Mitchell, Organization Member



David F. Sibley, Carrier Member

Dated:

April 17, 1997