

PUBLIC LAW BOARD NO. 1760

Award No. 112

Docket No. 112
N&W File MW-DEC-80-60

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company
 (Former Wabash)

Statement

of Claim: Claim on behalf of J. O. Comage appealing his dismissal assessed as a result of a November 8, 1988 investigation for violation of General Regulation GR-5 and conduct unbecoming an employee regarding belligerent and derogatory language towards District Claim Agent H. V. Cook.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board therefor.

The Carrier's District Claim Agent at Decatur, Illinois H. V. Cook, in October 1988 was handling the injury case of Miss Sheryl Reed, a non employee who had suffered an injury while on company property.

Claimant Trackman on October 10, 1988 telephoned the District Claim Agent concerning his handling of the Reed case. Apparently, as a result of that conversation Mr. Cook telephoned Division Engineer D. A. Griffith advising him that Claimant had advised Miss Reed not to meet with Mr. Cook, had called Cook a crook and had talked to him in a generally derogatory and demeaning manner.

The next day, at the conclusion at an already scheduled meeting with Claimant to review his safety record, the telephone conversation with Mr. Cook was discussed. Claimant admitted to Division Engineer Griffith that he had called Cook to talk about the Reed case. He further conceded that he had told Miss Reed not to meet with the Claim Agent.

As a result, Claimant was cited to an investigation charged with a violation of General Rule GR-5 for attempting to interfere with a settlement of a personal injury case involving Miss Reed and with conduct unbecoming an employee for the belligerent and derogatory language used towards Claimant Agent Cook.

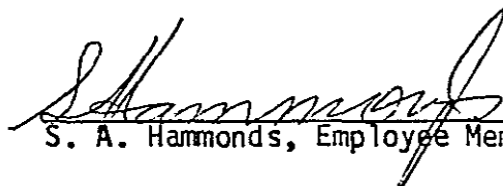
As a result of that investigation Claimant was concluded guilty as charged. He was discharged as discipline therefor.

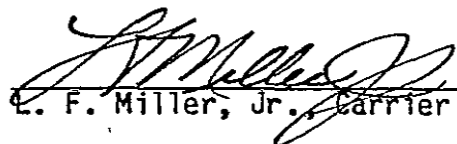
Claimant was accorded the due process to which entitled under Rule 30. He was properly notified, capably represented, faced his accusers and appealed his discipline.


There was sufficient evidence adduced, including the admissions of Claimant, to support the conclusions reached by Carrier as to Claimant's culpability of the charges placed against him. Clearly Claimant exceeded the limits of what can be reasonably considered as proper during his telephone conversation with District Claim Agent Cook. He did not have the right for character assassination, nor pursuant to Rule GR-5, did he have the right to interfere with the process of a settlement.

In imposing discipline it was proper to consider Claimant's prior record. It was sordid and sad. He had been previously dismissed several times and reinstated. Carrier need not work any more with an employee who has demonstrated that he does not value his job. The seriousness of the offense and his prior record leave this Board with no alternative but to uphold his discharge.

Award: Claim denied.


S. A. Hammonds, Employee Member


L. F. Miller, Jr., Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued February 23, 1990.