

BEFORE PUBLIC LAW BOARD NO. 1837

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NORFOLK & WESTERN RAILWAY COMPANY

Case No. 124

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. The dismissal of Messrs. D. J. Hedrick and P. J. Palmer for alleged conduct unbecoming employees in connection with a physical altercation that occurred on Thursday, November 5, 1998, was without just and sufficient cause, excessive, and an abuse of the Carrier's discretion. (Carrier File MW-FTW-98-97-LM-583.)
2. Claimants D. J. Hedrick and P. J. Palmer shall be reinstated with seniority, vacation, and all other rights unimpaired and they shall be paid for all monetary loss suffered by them beginning November 6, 1998, and continuing until the date they have been reinstated.

FINDINGS:

Claimants D. J. Hedrick and P. J. Palmer were employed by the Carrier as a machine operator and an assistant foreman, respectively, at the time of the claim.

On November 6, 1998, the Carrier notified the Claimants to appear for a formal investigation to determine their responsibility, if any, in connection with the charge of engaging in conduct unbecoming a Carrier employee in that they were involved in a physical altercation with each other on Thursday, November 5, 1998, at approximately 4 p.m., in the parking lot at South Lorain Clean-out Track, in Sheffield Village, Ohio, resulting in injury to Claimant Hedrick.

The hearing took place on November 17, 1998. On November 30, 1998, the Carrier notified the Claimants that they had been found guilty of the charges and were being assessed

discipline of dismissal from all service with the Carrier.

The Organization filed claims on behalf of the Claimants challenging the discipline. The Organization contends that because the testimony of each Claimant was in conflict with each other, the Carrier failed to support its case as the Claimants were the only eyewitnesses to the incident. The Organization further argues that the Carrier violated Rules 22-(A) and (E) of the parties' working agreement dated February 1, 1951, failed to conduct a fair and impartial hearing, failed to adequately meet its burden of proof, failed to take into account all of the surrounding circumstances of the incident, and that the discipline assessed was unjust, excessive, and an abuse of the Carrier's discretion.

The Carrier denied the claims based on the evidence in the record, contending that although there were conflicting versions of the altercation, the evidence at the investigation clearly established that both Claimants bore responsibility for the incident.

The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization, and we find them to be without merit.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimants were guilty of conduct unbecoming Carrier employees when they engaged in a physical altercation with each other in a parking lot. Their behavior was clearly unacceptable and deserving of discipline.

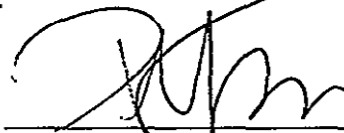
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been

unreasonable, arbitrary, or capricious.

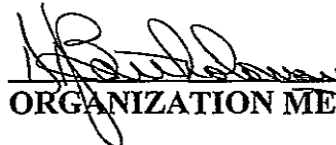
Given the lengthy seniority of these two Claimants, a total of forty-five years of unblemished service for the two of them, with one of them serving the Carrier for twenty years and the other being employed by the Carrier for twenty-five years, this Board must find that the Carrier acted unreasonably when it terminated the employees' employment for this one, albeit serious, incident. Consequently, we order that the Claimants be reinstated to service, but without back pay. The period that the Claimants were off shall be considered a lengthy disciplinary suspension.

AWARD:

The claim is sustained in part and denied in part. The Claimants shall be reinstated to service, but without back pay.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 3-10-00



CARRIER MEMBER

DATED: 3-2-00