

PUBLIC LAW BOARD 1837

(MW-MUN-78-54)

Case No. 39

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
vs  
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. The Carrier violated the effective Agreement dated February 1, 1951, on December 19, 1978, when it dismissed claimant C. J. Bergman.
2. The dismissal of claimant was excessive, capricious, unwarranted and unjustified. The claimant now be restored to service with seniority and benefits unimpaired and payment allowed for the assigned working hours actually lost, less any earnings in the service of the Company.

FINDINGS:

This Board upon the whole record and all the evidence finds that:

The Carrier and employee involved in this dispute are respectively Carrier and employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

OPINION:

Claimant was an Extra Gang Laborer on the date of events germane to this dispute -- November 2, 1978. He had about two and one-half years of service at that time. On that date, the Roadmaster in charge observed the Claimant driving spikes with

a sledge hammer. According to the Carrier, the Roadmaster instructed him, via the Claimant's foreman, to use a spike maul instead -- the proper tool for such work. Some fifteen minutes later the Roadmaster observed the Claimant remove his hard hat and shirt. The Roadmaster advised the foreman to correct this error, who ordered the Claimant to replace both in compliance with safety regulations. The Claimant refused. The Roadmaster then issued such order directly and warned that failure to comply would result in his removal from service pending an investigation. As he walked away from the conversation, according to the Roadmaster, he was grabbed and spun around by the Claimant; he advised the Claimant he was out of service. As he walked away again, the Claimant purportedly knocked his hard hat to the ground and implied that he would do harm to the Roadmaster by use of a weapon at some future date when he was inspecting along the line by use of a hi-rail.

According to the Claimant, he admits refusal to return his shirt and hard hat to use, contending a bad acne problem he had would clear up if the sun could get to his skin. He also admits accidentally flipping off the Roadmaster's hat while trying to delay his departure in order to discuss the matter; he denies issuing a threat as charged.

While witnesses at the hearing gave varying versions of the

events, the result was clearly insubordination by the Claimant both to a foreman and Roadmaster. Such action was inexcusable and condoning it where proper and properly issued orders are concerned would undermine the relationships of the supervised and supervisor, not to mention the obvious adverse effect on well-conceived rules and regulations. We find no reason to believe such actions were in jest or other than seriously taken. While we shall affirm the Carrier's actions here, we would point out that all witnesses called to give testimony at hearings are obliged to be fully responsive, including Roadmasters.

AWARD:

Claim is denied.

James F. Searce  
James F. Searce  
Neutral Member

G. C. Edwards  
G. C. Edwards  
Carrier Member

W. E. LaRue  
W. E. LaRue  
Organization Member

Dated at Washington DC this 1 day of June 1981