

Award No. 14

Case No. MW-CR-77-101

Parties Brotherhood of Maintenance of Way Employees  
to and  
Dispute Norfolk and Western Railway Company

Statement of Claim 1. The dismissal of Extra Force Laborer D. L. Morris was without just and sufficient cause, wholly disproportionate to the alleged offense.  
2. Extra Force Laborer D. L. Morris should be given the opportunity to return to the employment of the Norfolk and Western Railway Company, and compensated for all time lost, with vacation, seniority, and all other rights unimpaired, after a reasonable discipline period.

Findings The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 1, 1976, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

The Claimant, an Extra Force Laborer, was employed as such for about a year and a half. He was operating a Pneumatic Spike Driver (air hammer), with the T-3 Tie Gang, on February 24, 1977. Claimants function was to drive in any spikes not properly driven by the automatic spiking machines which were preceeding him.

Claimant, at some point in time, asked his Foreman, Mr. Bill Payne, a thirty year veteran, to send someone to run the Pneumatic Spiker because he was tired. The Foreman told Claimant that there was no one then available to relieve him. Whereupon, Claimant told the Foreman that he would not drive

any spikes. The Foreman instructed Claimant to go see the Tie Gang Supervisor and tell him that he wasn't going to drive any more spikes. He did and the Tie Gang Supervisor told Claimant to return to his machine, do the best he could, and that he would be sending men back to help him shortly.

Claimant, upon returning to the rear of the T-3 Tie Gang, advised Foreman Payne what the Tie Gang Supervisor had told him and in so doing was gesturing with his finger almost in the Foreman's face. The Foreman took ahold of Claimant's finger. Whereupon Claimant struck his Foreman on the jaw with his fist, knocking him unconscious and causing his head to strike the ballast. The Foreman received a cut of the back of his head which required nine stitches.

As a result of this altercation Claimant was removed from service at approximately 3:00 PM on February 24, 1977.

A formal investigation was held on March 16, 1977. As a result thereof Carrier concluded that Claimant was guilty of having assaulted his Foreman W. H. Payne, Section Foreman, on February 24, 1977.

The Board finds that Claimant was given a fair hearing.

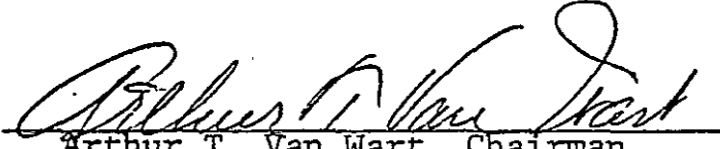
There was sufficient evidence to support the conclusion of Carrier that Claimant had assaulted his Foreman. We find that the discipline assessed therefor was not unreasonable. Here, Claimant used more force than was necessary in the circumstances prevailing.

If leniency is to be extended such should be a matter for the Carrier. A denial Award here should not estop Carrier from so doing. In fact there are circumstances herein which cause the Board to recommend that Carrier re-hire Claimant and place him under a different Foreman. Claimant has a good record, he is highly recommended and comes from a railroad family and has been off a long period of time.

Award Claim disposed of as per findings.

  
A. D. Arnett, Employee Member

  
G. C. Edwards, Carrier Member

  
Arthur T. Van Wart, Chairman  
and Neutral Member

Issued at Wilmington, Delaware, November 26, 1979.