

PUBLIC LAW BOARD NO. 2139

Parties: Brotherhood of Maintenance of Way Employees

and

The Washington Terminal

Statement of Claim: "(1) The discipline imposed was too harsh for the offense.

(2) The Carrier shall be required to reinstate Trackman Dais, with seniority unimpaired."

Discussion: The Claimant was a Trackman with over four years seniority. On the day in question, the Claimant's Foreman testified he requested the Claimant to help him place a couple of ties across a track but he refused. The Foreman called the Engineer who told him to send the Claimant to his office.

The Claimant, contended that he did not refuse to move the ties, but told his Foreman that it would take four men to move them, and that if the Foreman would get three other men, he would be glad to do it.

The Foreman stated that two men had been doing this work. The Foreman also stated that the Claimant cursed him when he went to call the Engineer, and after the Engineer told him that he should bring the Claimant to his office, the Claimant ran ahead to the Engineer's office. The Engineer testified that the Claimant rushed into his office, very angry with quenched fists, and stated in a loud voice that the Foreman was a liar and that he had not refused to do anything. The Engineer stated that each time he asked the Foreman to explain what had happened, the Claimant would interrupt and call him a damn liar and state the Foreman did not know what he

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was talking about.

The Engineer further testified that, in the course of this conference, the Claimant approached him with quenched fists and stated he was not afraid of any man including the Engineer. The Engineer added the Claimant told the Foreman he was a damn liar and he was going to get him, and went toward the Foreman with quenched fists, shouting in a loud voice. The Engineer testified he tried to calm the Claimant but to no avail, so he called the Captain of Police to have the Claimant removed from the property since he was now out of service.

The Captain of Police and a Draftsman, who occupied a desk in the Engineer's office, also testified as to the angry hostile manner which the Claimant displayed toward the Engineer and the Foreman. The Captain of Police stated the Claimant told the Foreman, as he was leaving the office, at the request of the Captain, that the Foreman was a liar and he would get him.

The Claimant admitted that he was angry and upset when he was in the Engineer's office because of the lies that the Foreman had told about him, especially about his alleged refusal to perform the work.

The Claimant testified that as angry as he was, he never stated that he would get the Foreman. He added that perhaps he may have felt that way, but he never said so. He also added that he did not enter the Engineer's office with quenched fists. If he had wanted to strike anyone, he would have done so because there were not too many persons who could restrain him. He stressed that he had no intention of striking the Foreman, because if he had, he

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would have done so.

The Claimant's service record showed that he had received a five day suspension on December 22, 1975 for absenteeism and a 15 day suspension on April 28, 1977 for insubordination to a Foreman (but not the Foreman involved in this case).

Carrier's Position

The Carrier stated the evidence of record clearly shows that the Claimant was insubordinate toward his Foreman when he refused to do the job assigned him. Moreover, in addition to being insubordinate, the Claimant also threatened his Foreman. These threats were corroborated by the Foreman and the Captain of Police. The Carrier noted that the Claimant admitted his poor conduct and attitude when he testified that he felt like doing those acts of which he was accused.

The Carrier stressed that the weight of the credible evidence supports its charge that the Claimant was discourteous and disorderly toward his Foreman and Engineer as well as being insubordinate to them.

The Carrier stated that the Claimant had previously been disciplined for being insubordinate to a supervisor, and the Carrier treated him leniently for previous offense. However, the Carrier had now determined that dismissal was a commensurate penalty for the present offense.

Organization

The Organization stated that the Carrier committed procedural errors in its Investigation when it filed a general rather than a

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specific charge against the Claimant. It was also a procedural error to read the Claimant's discipline record into the Transcript over the Organization's objection. A review of that record precluded the Claimant from receiving a fair and impartial hearing.

The Organization stated that even assuming the charges against the Claimant were true, the discipline was so severe to point of being arbitrary. The Claimant was carried away temporarily by his anger, but he harmed no one, and he testified he had no intention of ever harming anyone. Dismissal was not warranted in this case.

Findings: The Board, upon the whole record and all the evidence, finds that the employee and carrier are Employee and Carrier within the meaning of the Railway Labor Act; that the Board has jurisdiction over the dispute and that the parties to the dispute were given due notice of the hearing thereon.

The Boards finds no basis in the record to vacate or modify the discipline assessed against the Claimant, severe as it was. The Board could properly chose to accept the version of events related by witnesses such as the Foreman, the Engineer and the Chief of Police, rather than the version advanced by the Claimant. The Carrier is free to chose one version over another when there is a dispute between the parties, as long as the record contains substantial probative evidence to support the version it accepts.

The Carrier may treat an employee's refusal to comply with instructions of a supervisor, as a grave offense, just as long as compliance with the instructions will not place the Claimant in

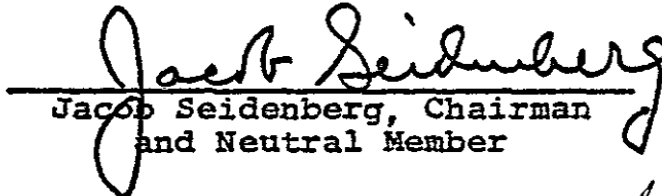
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imminent danger of life or limb. There is no such contention here.

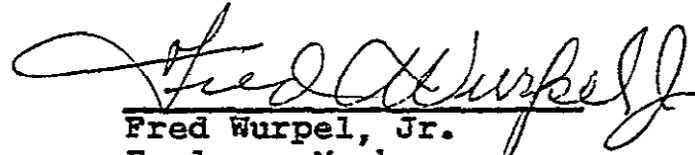
The Board finds no merit in the Organization's procedural objection and they are hereby dismissed.

The Board must conclude on the record before it, that it has no recourse but to deny the claim.

Award: Claim denied.


Jacob Seidenberg, Chairman
and Neutral Member


Merrill L. Stewart
Carrier Member


Fred Worpel, Jr.
Employee Member

November 30, 1978