

PUBLIC LAW BOARD NO. 2142

Award No. 1

Docket No. MW-1130

Case No. 1

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Illinois Central Gulf Railroad

Statement

of Claim: Appeal of the decision of Assistant Superintendent, H. L. Craddock, on April 14, 1977, dismissing welder Charlie Marlow from service of the Illinois Central Gulf Railroad for violations of Maintenance of Way Rules "K" and "U".

Findings: The Board, after hearing upon the whole record and 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 January 23, 1978, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant Welder, Charlie Marlow, was dismissed from service, April 14, 1977, as the result of an investigation held April 6, 1977, to determine the facts and place responsibility, if any, in connection with accusations of theft and misappropriation of Railroad property, made against his Division Engineer, W. H. Knight, in a letter dated January 12, 1977, addressed to the then President of the Railroad, Alan Boyd. Carrier concluded that such accusations were vicious and untrue and that Claimant's actions constituted a violation of Maintenance of

Way Rules "K" and "U". Said Rules, in pertinent part, provide:

"K" "Conduct -
Courteous deportment is required of all employees in their
relation with... and each other...
Employees must not be...

.....

(3) Dishonest

.....

(5) Quarrelsome or otherwise vicious....

....."

"U" "Dishonesty....., making false...or statements....."

The function of this Board has been proscribed to be that of an appellate body which reviews the evidence, primarily the transcript of the investigation, to determine whether the Claimant had been accorded the due process assured him by the appropriate provisions of his contract, then whether sufficient evidence was adduced to support the conclusions reached by Carrier and finally whether the discipline assessed was unreasonable.

The Board finds that Claimant Marlow was accorded due process. Carrier was not obligated to cite an alleged rule violation in its notice of investigation. Such notice, however, should be sufficient so as to apprise Claimant as to the purpose for which it is being held. It is held that Claimant was duly and properly notified as to the purpose of the investigation. Claimant was given a fair hearing, and was capably represented. He faced his accusers and Claimant exercised his right of appeal. The delay in furnishing a transcribed copy of the investigation was not, in the circumstances, held to be reversible error.

There was sufficient competent and probative evidence adduced, including Claimant's admissions, to support the conclusion as to

Claimant's culpability reached by Carrier. It reflected that the President of the Railroad had received an anonymous letter, dated January 12, 1974, postmarked Memphis, Tennessee, accusing therein Division Engineer Knight of various fraudulent and illegal conduct, such as but not limited to "stealing from the railroad and selling material to private contractors", "to use employees on the railroad to build a car porch....and also to build a patio on company time". The letter caused a comprehensive and thorough internal investigation resulting in exoneration of Engineer Knight. However, the concern for identification of the party who would stoop to such tactics to ruin the character and record of a competent supervisor caused the implementation of another comprehensive investigation which resulted in Claimant being placed under charges for the accusations made against Division Engineer Knight. Claimant as the result of admission made during the course of such investigation was offered the opportunity to take a polygraph test which he declined. The evidence included the testimony of security officers who had investigated the allegations made, that of a competent handwriting analyst, that of a retired employee named in the letter as having allegedly directed or worked on building additions to Division Engineer Knight's home and that of Claimant. All of the testimony, when weighed, supported Carrier's conclusion. As was pointed out in Third Division Award 10791:

"This raises the question of weighing evidence and passing upon the credibility of the witnesses, a function reserved to the Hearing Officer who heard the testimony and observed the demeanor of the witnesses. In a long line of cases this Board has held that it will not substitute its judgment for

that of the Hearing Officer upon the weight of evidence. This principal was well expressed by Referee Carter in Award 3149 as follows: 'We are committed to the rule that it is not proper function of this Board to weigh the evidence and if the evidence is such, if believed, it supports the findings of the Carrier, it will not be disturbed.'"

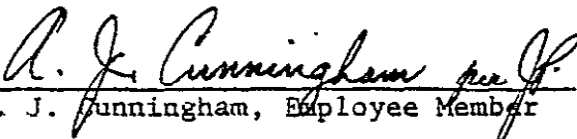
This Board so finds in the instant case.

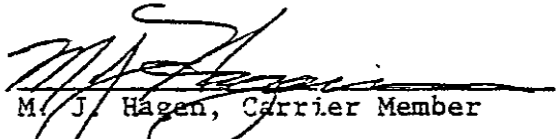
Dismissal is the utmost penalty which may be assessed for violation of Company rules. Claimant's reprehensible conduct resulted in a violation of Rule K. Here there was an unfounded vicious personal attack made on the character of a supervisor who had achieved 30 years of unblemished service. Its significance and nature is best expressed in the words of William Shakespeare who said:


"He who steals my purse steals trash but he who filches from me my good name steals that which not enriches him but makes me poor indeed."

The Board therefore finds that the discipline assessed was not, in the circumstances, unreasonable. This claim will be denied.

Award: Claim denied.


A. J. Cunningham, Employee Member


M. J. Hagen, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Falmouth, Massachusetts, August 27. 1978.