

Award No. 13

Case No. 5

Docket No. MW-1096

Parties Brotherhood of Maintenance of Way Employees

and

Illinois Central Gulf Railroad

Statement of Claim

1. The discipline assessed against Messrs. B. K. Flannagan, R. L. Garrett, L. A. Ferris and C. E. Hall was without just and sufficient cause and based upon unproven charges.
2. Messrs. B. K. Flannagan, R. L. Garrett, L. A. Ferris and C. E. Hall be reimbursed for all time lost and that their personal records be cleared of the discipline assessed.

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 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.

The four Claimants herein were regularly assigned Trackmen on October 5, 1976. They were assigned to a Work Train. At approximately 9:15 AM they and other members of the Work Train gang were permitted a water break. The water container was located in the caboose of the Work Train. While Claimants were inside the caboose they became involved in an altercation with the Work Train Conductor.

The Claimants, who were members of Maintenance of Way Gang No. 227, and the Conductor of the Work Train received notices of a formal investigation, which after several postponements, was held January 4, 1976,

"...to determine the facts and whether you entered into an altercation about 9:15 AM, on Tuesday, October 5, 1976, at or near Gilman, Illinois...."

As a result of that hearing Carrier concluded that all who had been so charged had participated in the altercation. The discipline was assessed in varying

degrees based upon the degree of each such individuals participation therein.

The Board finds that Claimants were accorded a fair hearing. They were most capably represented. There are no procedural errors which bars review of the case on its merits.

We find that there was sufficient competent evidence adduced to support the conclusions reached by Carrier as to the culpability of each Claimant. It is clear that there was profane, vulgar and abusive language used. Such was offensive and insulting to all concerned. Claimant Trackmen were disrupting the interior of the Work Train caboose. There were racial epithets bandied about. The Conductor was held and struck by one member of the Maintenance of Way Gang No. 227. After he had broken away therefrom and found a maul handle Claimant Trackmen ran from the caboose.

This Board, as did Public Law Board No. 2269, which heard the Conductor's case and upheld Carrier's conclusion as to his guilt, also concludes here that these Claimants had participated in the October 5, 1976 altercation. Black's Law Dictionary - Fourth Edition - defines "altercation" as:

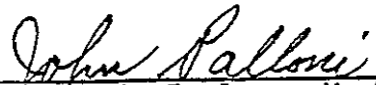
"warm contentions and words, dispute carried on with heat or anger, controversy, wrangle, wordly contest. Ivory vs. State 128, Tx. Crr. 408, 81SW Sec. 696 698."


"Battery" is also defined therein as:

"Any unlawful beating, or other wrongful physical violence or constraint inflicted on a human being without his consent. Goodrum v. State 60GA 511."

An examination of the record indicates that all Claimants had, to some degree, participated in the altercation as well as in the battery committed on Work Train Conductor Hamlin on October 5, 1976. An altercation is a very serious matter which can result in injury to a fellow employee. It is frowned upon and is dealt with generally, most severely. In the instant case the Board finds that the discipline assessed in the circumstances prevailing was most reasonable. This Claim will be denied.

ward Claim denied.


J. Palloni, Employee Member


M. J. Hagen, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued at Wilmington, Delaware, April 18, 1979.