

PUBLIC LAW BOARD NO. 2142

Award No. 4

Docket No. MW-1117

Case No. 12

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Illinois Central Gulf Railroad

Statement

of Claim: That the Illinois Central Gulf Railroad unjustly dismissed M. J. DeLeon from the service, effective February 23, 1977. That the Illinois Central Gulf Railroad be ordered to restore M. J. DeLeon to service with all rights unimpaired and to pay M. J. DeLeon for each day commencing February 24, 1977 and continuing until he is returned to service.

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 Trackman, about 11:30 a.m. on February 3, 1977, entered a tool shanty where several section gang members were eating lunch. He commenced to accuse Trackman R. Randolph of having stolen his bag of marijuana. Trackman Randolph denied such accusations. Whereupon Trackman M. J. DeLeon engaged in an altercation with Mr. Randolph. The fight, witnessed by seven people, continued until broken up by Track Foreman Carson.

Carrier's Special Agents and the Park Forest South Police came to the scene. They interviewed and searched both Claimant DeLeon and Trackman Randolph. No marijuana was found on either person or in the area. Mr. Randolph refused to press the charge of assault against Claimant. Claimant was removed from service pending a formal investigation.

Claimant was notified to attend an investigation on February 16, 1977 to determine whether he was involved in an altercation on February 3, 1977 with a fellow employee. As a result thereof, Carrier concluded that Claimant was guilty of the charge brought against him and that he had thereby violated Rule K of the Rules for the Maintenance of Way and Structures. Claimant was dismissed as discipline therefor. Rule K, in pertinent part, provides:

"Conduct-Courteous deportment is required of all employees in their relations with...each other... Employees must not enter into altercation...fight...while on duty or on Company property.

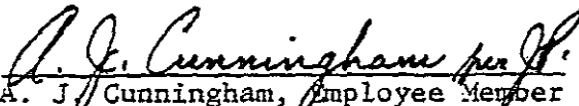
Employees must not be:....(5) Quarrelsome or otherwise vicious...."

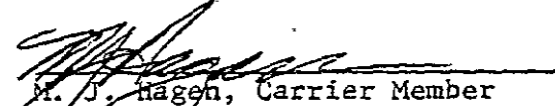
The Board finds that Claimant was given a fair hearing, ably represented, had witnesses, faced his accuser, and exercised his right of appeal. It was not prejudgment for Carrier to not have cited Trackman Randolph. The facts collected prior to the hearing so clearly indicated that Claimant was the aggressor, that he initiated the fight, that Mr. Randolph was a victim of circumstance who had acted in self defense and therefore incidently suffered physically for such imbalance, that there was no need to cite Mr. Randolph as a defendant. He was present as a witness.

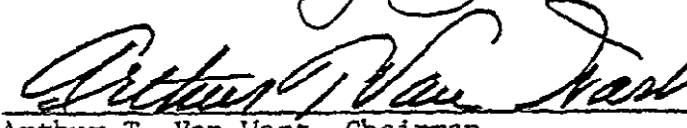
There was sufficient competent and probative evidence adduced, including Claimant's admission that he was fully aware of the rules and that he did not comply with Rule K, to support Carrier's conclusion as to Claimant's culpability. The evidence was simply overwhelming as to Claimant's onerous conduct. There was no provocation therefor shown or proved to justify Claimant's unwarranted and vicious attack against a fellow employee while on duty and on Company property. Rule K was clearly violated.

The Board finds that the seriousness of the offense, Claimant's conduct and his brief period of service were such as to conclude that the discipline assessed was not 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