

PUBLIC LAW BOARD NO. 2206

AWARD NO. /

CASE NO. 17

PARTIES TO THE DISPUTE:

Brotherhood of Maintenance of Way Employees

- and -

Burlington Northern, Inc.

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Sectionman D.E. Rhodes, August 8, 1977, was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File 17-3 MW-20 11/17/77)
- (2) Sectionman D.E. Rhodes be reinstated to his position of Sectionman and paid for all time lost."

OPINION OF BOARD:

In July 1977 Claimant D.E. Rhodes was employed as a Section Laborer in Carrier's Willis Yard, Galesburg, Illinois, under the supervision of Foreman Guadalupe Alvarado. As a result of an incident which occurred July 12, 1977, Claimant was served with notice to attend an investigation on July 19, 1977 for the purpose of:

...ascertaining the facts and determining your responsibility in connection with your alleged failure to comply with instructions given you promptly and otherwise being quarrelsome and argumentative with section foreman at about 3:00 PM, July 12, 1977, in the vicinity of the South Leg Coach Yard Wye, Willis Yard, Galesburg, Illinois...

Following the hearing, Claimant was advised on August 8, 1977 that he had been found guilty as charged and was dismissed from service effective that date. Under date of September 1, 1977 the instant claim seeking his

reinstatement was filed by the General Chairman. The Organization pressed the claim without resolution on the property. In May 1978 a tentative settlement apparently was reached but Claimant later disavowed that settlement and sought complete vindication. The details of the unsuccessful settlement negotiations were not placed upon our record in furtherance of the well-recognized principles that such efforts should be encouraged in grievance handling without fear of possible prejudicial disclosure in arbitration should the settlement efforts fail.

Following due notice to all interested parties, we heard this case on February 13, 1979. Claimant was present throughout the hearing and was represented by International Vice President F. H. Funk. Carrier was represented by Mr. Walter Hodynsky, Assistant Manager-Labor Relations. Claimant requested and, in the absence of objections, was granted leave to tape record the hearing.

Our review of the record persuades us that procedural objections raised by the Organization must be dismissed. We find no procedural defect in the notice of hearing nor in the fact that the Foreman was not also charged. Nor do we find persuasive the allegations of prejudice or pre-judgment by the Hearing Officer. In any event, these allegations were raised de novo at our hearing.

Analysis of the record evidence makes it clear that Claimant, without justification or provocation, failed and/or refused promptly to follow reasonable orders from his duly authorized superior. In plain words he was insubordinate, quarrelsome and argumentative. His misconduct stopped short of verbal or physical abuse but nonetheless he engaged in serious misconduct. His actions warrant severe discipline, but in our considered judgement, dismissal was excessive in this case. We note that his disciplinary record apparently was clear before this incident and we are not persuaded that he is incorrigible or incapable of learning from this experience. The discipline

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shall be reduced from dismissal to suspension without pay. Claimant is returned to service without benefits or compensation for time lost, on condition that he meets the regular physical requirements for the position of Sectionman.

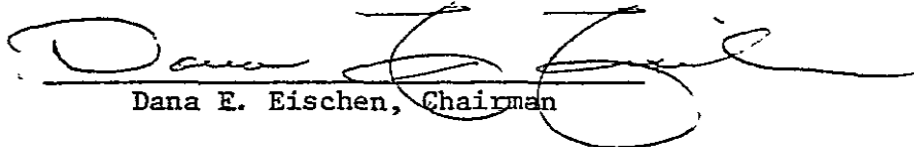
FINDINGS:

Public Law Board No. 2206, upon the whole record and all of the evidence, finds and holds as follows:

1. That the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
2. that the Board has jurisdiction over the dispute involved herein; and
3. that the discipline of dismissal was excessive in this case.

AWARD

Claim sustain to the extent indicated in the Opinion.

  
Dana E. Eischen, Chairman

  
F. H. Funk, Employee Member

  
L. K. Hall, Carrier Member

Dated: 4/25/79