

AWARD NO. 32

CASE NO. 36

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 Group 5 Machine Operator J. P. Davis was without just and sufficient cause and wholly disproportionate to the alleged offense. (System File S-P-175C)
- (2) Machine Operator J. P. Davis be reinstated with all seniority and other rights unimpaired and be compensated for all time lost.

OPINION OF BOARD:

Claimant J. P. Davis was a regularly assigned Group 5 small machine operator at Interbay, Washington, in the Maintenance of Way Track Subdepartment. At the time of the incident in question he was under the supervision of Steel Gang Foreman L. Mitchell.

On Wednesday, June 7, 1978, Claimant was assigned to drive anchor spikes with a hammer. At or about 11:00 AM Foreman Mitchell observed an altercation between Claimant and Sectionman Newell in which Claimant was holding a knife pointed in Sectionman Newell's direction. Foreman Mitchell prevailed upon Claimant to sheath his knife, and subsequently informed Claimant he was being withheld from service pending results of an investigation.

Claimant received notice under date of June 8, 1978 to

attend investigation in the Depot at Cashmere at 10:00 A.M. on Friday, June 16, 1978, to ascertain the facts to determine your responsibility in connection with your alleged altercation with fellow employee on Company property at approximately 11:00 A.M. on Wednesday, June 7, 1978, near Leavenworth, Washington, M.P. 1680.

Following the investigation, Claimant was notified on July 6, 1978 of his dismissal from Carrier's service:

Facts developed at the investigation cited above disclosed that you were in violation of Rules 700, 701 and 701(B) of the Maintenance of Way Department Rules while working as a Machine Operator on June 7, 1978.

For your responsibility in connection with this altercation and for violation of the above quoted rules, this is to advise you are hereby discharged from the service of Burlington Northern effective June 7, 1978. Will you please arrange to return all Company property in your possession including any free transportation that you may hold to Mr. R. F. Knutson, Asst. Superintendent Roadway Maintenance, Seattle.

On July 31, 1978 the Organization initiated the instant Claim on behalf of Claimant Davis. The Organization demanded reinstatement for Claimant on the basis that he should not have been withheld from service pending results of the investigation and that the investigation was prejudged when Sectionman Newell was not charged as a principal. As the claim progressed the Organization also argued, by letter dated October 5, 1978, that Claimant's behavior was provoked by Sectionman Newell and therefore justified.

As to the Organization's first two arguments, we find no reason on the record to dispute Carrier's decision to withhold Claimant from service pending results of an investigation, nor do we find any evidence to suggest that Claimant was afforded other than a fair and impartial hearing.

Finally, although there is direct testimonial conflict as to the verbal exchange which preceded Claimant's drawing of his knife, we cannot find that Claimant's actions were in any way justified. While we do not condone verbal abuse in any way, there is no justification for Claimant's resort to violence. Name-calling does not justify assault with a deadly weapon. We cannot excuse Claimant's dangerously excessive and violent actions. Accordingly, we find that Carrier's assessment of discipline was appropriate. The Claim is denied.

FINDINGS:

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

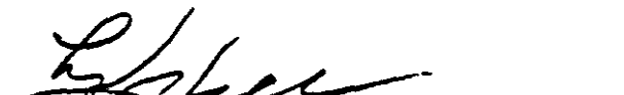
1. that the Carrier and Emloye involved in this dispute are, respectively, Carrier and Emloye within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was not violated.

AWARD.

Claim denied.


Dana E. Eischen, Chairman


F. H. Funk, Emloye Member


L. K. Hall, Carrier Member

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Date: October 15, 1980