

PUBLIC LAW BOARD NO. 2206

AWARD NO. 79

CASE NO. 74

PARTIES TO DISPUTE:

BURLINGTON NORTHERN RAILROAD

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of B&B Carpenter Helper T. F. Calhoun September 6, 1979, was without just and sufficient cause and wholly disproportionate to the alleged offense.
(System File 15-3 MW-20 3/24/80A)
- (2) B&B Carpenter Helper T. F. Calhoun be reinstated with all seniority rights unimpaired to his position and paid for all lost wages.

OPINION OF BOARD:

On June 30, 1979 Claimant was working as a B&B Carpenter Helper at Cicero, Illinois, under the immediate supervision of Gang Foreman David Briggs. During the course of the workday, Claimant and Briggs engaged in two altercations. During a roofing job, Briggs and Claimant exchanged words over job assignments and then confronted one another behind the shed. Each blames the other for striking the first blow but that confrontation ended in a wrestling stalemate which was broken up by another employe. After that incident, Briggs told Claimant that he was "off the clock". Claimant walked to the tool area, picked up a post hole digger handle (a piece of wood five feet long and two inches in diameter) and confronted

Briggs with this weapon. According to Briggs, he retreated and fell to the ground. According to Claimant and several other eyewitnesses, Briggs tried to grab the weapon away from Claimant. All concur that Briggs slipped to the ground and, while he was on his knees, Claimant struck him on the head with the post hole digger handle. Briggs subsequently was taken to a nearby hospital where his head wound was closed with two stitches.

Claimant was interviewed by supervision and taken out of service pending investigation. Following hearing and investigation into the incident, Claimant was terminated from service and Briggs received a record reprimand.

The Organization seeks the return of Claimant to service with full back pay on grounds that he did not receive a fair and impartial investigation and that he was provoked into a self-defensive reaction by the Foreman. We have carefully reviewed the evidence and find that neither of these positions can be sustained on this record. So far as we can determine, Calhoun received all contractual due process to which he was entitled. Even assuming arguendo that Briggs, who had an apparently well-deserved reputation as a bully, verbally provoked Claimant, Calhoun's attack with a potentially deadly weapon was not justifiable and can in no measure be condoned by this Board. Claimant was in no imminent danger at the time he picked up the weapon and he chose to escalate the confrontation to a deadly level. We have no alternative but to deny this claim.

AWARD

Claim denied.

W. Hodynsky
Carrier Member

F. H. Funk
Employee Member

Dana E. Eischen
Dana E. Eischen, Chairman

Date: January 9, 1984