

Award No. 19
Case No. 37

Public Law Board No. 2363

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Louisville and Nashville Railroad Company

STATEMENT
OF
CLAIM:

1. Dismissal of Machine Operator P. D. Durkalski on February 27, 1978 was without just and sufficient cause and was exceedingly disproportionate to the charge from the arising on December 29 and 30, 1977.
2. Claimant shall be reinstated to his former position with seniority rights unimpaired with all other benefits and privileges. Rule 27(f).

FINDINGS:

Claimant, an employe with about 4 1/4 years service, was dismissed for willfully damaging Carrier vehicles.

There is substantial evidence, consisting of testimony by a fellow employe, L. A. Flowers, that supports Carrier's findings of willful damage to the vehicles. That evidence

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establishes that while a few of Carrier's trucks were on line at a crossing waiting for a train to pass, their drivers engaged in what they considered "horseplay." In the course of their foolish antics, according to Flowers, claimant threw coke bottles from his van and hit other trucks; he also hurled paper that was on fire at the trucks and later broke the headlights on the dump truck with a wrench. On the following day, these inexcusable antics were repeated in some degree and, Flowers testified, claimant smeared the window of a truck with a cupcake and broke the headlights on the van.

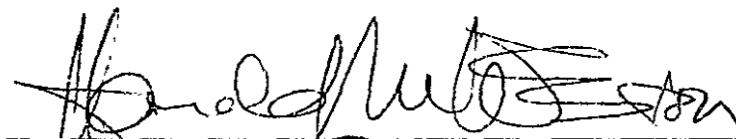
While claimant denied all but throwing the cupcake, Flowers' testimony is credible and there is no indication in the record that it was prompted by any improper consideration.

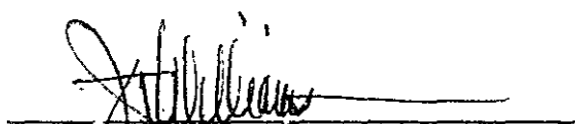
We have considered the contention that Carrier subsequently restored to service, on a leniency basis, several of the drivers who also threw objects at company trucks on these occasions. This Board is nevertheless not persuaded that Carrier's decision to dismiss claimant and not subsequently to reinstate him should be reversed. The exercise of leniency in regard to reinstatement rests with Carrier under the circumstances of this case. We are not in a valid position to require Carrier to retain employes who have deliberately damaged its equipment.

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AWARD: Claim denied.

Adopted at Louisville, Kentucky, *January 7, 1980.*


Harold M. Weston, Chairman


Carrier Member


Employee Member