

PUBLIC LAW BOARD NO. 2366

AWARD NO. 18

CASE NO. 30

CASE NO. 1304 MW

FILD: C-101-T-79

PARTIES TO DISPUTE:

Illinois Central Gulf Railroad

and

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM

- "(1) The dismissal of Trackman Jamie Arreola was without just and sufficient cause and wholly disproportionate to the charge leveled against him (Case No. 1304 M of W).
- (2) Trackman Jamie Arreola shall be reinstated with all rights unimpaired and compensated for all wage loss suffered."

OPINION OF BOARD

This Claimant had been suspended from work for 4 days and he attempted to return to work prior to the end of the 5 day suspension. His Track Foreman refused to permit him to return, and at that time, in front of a witness, he engaged in certain profanity and stated that he would kill the Foreman. He repeated that threat two or three times, and at one point stated that he was going home to get his gun in order to effectuate the threat.

The Employee was afforded an investigation and subsequent to that proceeding, he was terminated from employment.

At the hearing, the Claimant admitted that he had threatened the Foreman's life, however he stated that he was "just playing." The Foreman indicated that there was nothing humorous about the manner in which the threat was made.

Although, when the matter was under consideration on the property, certain procedural objections were raised concerning the fact that the letter of termination was not signed, the submission to this Board does not stress that fact and, under all of the circumstances and in consideration of the language of the agreement, we do not find a fatal error.

The Organization has raised certain question as to the Claimant's ability to speak and understand English, however we find nothing of record to indicate that he was unable to understand the proceedings or that his rights were, in any manner, prejudiced. Further, we have noted some indication of stress on the part of the Employee, however we find nothing of record which indicates that the Employee was under such an emotional stress as to not be responsible for his actions.

Finally, we have considered the merits of the dispute, both as to whether or not the Board is convinced that substantive evidence was presented from which the Carrier was warranted in concluding that, in fact, a threat was made, and if so, whether or not the discipline of discharge was excessive.

The fact that the Employee now asserts that his remarks were made in a joking manner in not controlling upon the Carrier. We noted in Third Division Award No. 20292 that a Carrier need not accept an individuals' exculpatory testimony of intent where the actions are to the contrary. Individuals are presumed to intend the natural and logical consequence of their actions, and an individual's intent may be reasonably inferred from outward manifestations and activities. Thus, we feel that the Carrier was justified in concluding that a threat was made.

Concerning the severity of the disciplinary action, certainly a threat to the life of a Supervisor is grounds for a discharge. However, when we also consider the Employee's past record, we feel that the imposition of discipline was not arbitrary or capricious. We have noted that on April 4, 1979, the Employee was reprimanded and sent home for one-half day for a violation of Rule K, which prohibits boisterous, profane, and vulgar language. Thus, the Employee was certainly placed upon notice three weeks before the incident that profanity would not be tolerated, and thus it is difficult indeed to consider that actions of the Carrier were unjustly harsh in this case.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence finds:

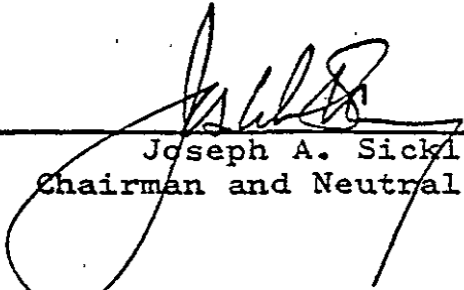
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due and proper notice of hearing thereon.

AWARD

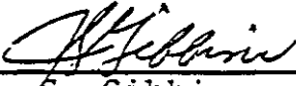
Claim denied.



Joseph A. Sickles
Chairman and Neutral Member



Hugh G. Harper
Organization Member



J. S. Gibbins
Carrier Member



7/4/81
DATE