

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 16

CASE NO. 17

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) and
DISPUTE) BURLINGTON NORTHERN RAILROAD (Former Joint
Texas Division of Chicago, Rock Island and
Pacific-Fort Worth and Denver Railway)

STATEMENT
OF CLAIM:

1. That the dismissal of Trackman B. R. High was without just and sufficient cause and in violation of the current Agreement, said action being unduly harsh, excessive and in abuse of discretion.
2. That Claimant shall be restored to his former position with the Carrier, with seniority and all other rights restored unimpaired and that he receive compensation for all wage loss suffered as a result of his wrongful dismissal.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and Carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

Claimant Bobby Ray High, was employed as a Trackman working on Extra Gang #1 in the vicinity of Teague, Texas. He has been an employee of the Carrier since August 20, 1980, working primarily as a Track Laborer in the area of Teague and Fort Worth, Texas. On December 15, 1983, the Carrier dismissed Claimant from its service, writing him: "Effective this date you are hereby dismissed from the services of the Burlington Northern Railroad Company for violation of Safety Rules and General Rules 19, 563 and 564 in connection with an altercation between you and Trackman L. J. Hall, while working on Extra Gang #1 at east switch of Teague Yard at about 2:45 PM on November 23, 1983, as evidenced by a formal investigation afforded you on December 6, 1983 at Teague, Texas."

Burlington Northern Safety Rules 563, 564, and General Rule 19 read as follows:

"563. Burlington Northern service demands the faithful, intelligent, courteous and safe discharge of duty. Courteous, orderly conduct is required of all employees. Boisterous, profane, sexist or vulgar language is forbidden. Employees must not enter into altercation with any person, regardless of provocation, but will make note of the facts and report such incident in writing to their immediate supervisor."

"564. Employees will not be retained in the service who are careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who conduct themselves in such a manner that the railroad will be subjected to criticism and loss of good will."

"19. Scuffling, horseplay, practical jokes, ethnic jokes, harassment and all conduct of a similar nature, either on or off duty while on company property is prohibited."

There is no dispute about the fact that Claimant engaged in an altercation with Mr. Hall. The testimony of seven eyewitnesses describes the quarreling, scuffling, and fighting on duty on company property. Claimant was asked: "At about 2:45 p.m. on that day did you engage in an altercation with Mr. L. J. Hall?" His answer: "yes". (Tr., p. 40). Further, the transcript shows:

"Q. Mr. High, you have heard Rule 19 read into the record. On the morning of November 29, 1983 and up to the time of the incident under investigation, which was the altercation at about 2:45 p.m., were you in compliance with Rule 19?

A. No." (Tr., p. 63)

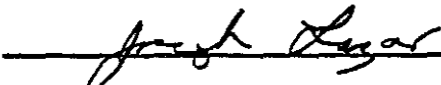
The evidence of record is clear beyond any doubt that Claimant violated Burlington Northern Safety Rules 563, 564, and General Rule 19.

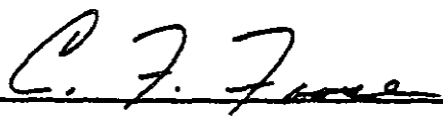
This Board, in its Award No. 7, has found that "The Carrier is obligated under law to provide a safe working place for its employees. Strict compliance by the employees with the requirements of (Rule 564) and the objective enforcement of this rule by the Carrier, contribute to the security and safeguarding of the employees of the Carrier."

Every day experience teaches the simple lesson that joking and horseplay build up into quarrels and arguments which lead to emotional outbursts and fights. Reasonable employees and supervision know this and realize that it is necessary at times to calm down the persons arguing before matters get out of control, as in the instant case. Unfortunately, the calming down did not take place. The claimant, however, must bear the consequences of his wrongful behavior. In the interest of safe and orderly conduct of railroad operations, it is necessary to uphold the discipline of claimant. Discharge was not excessive in the circumstances of this case.

A W A R D

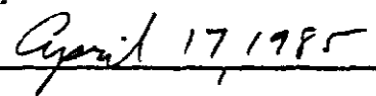
- 1.. The Carrier is not in violation of the Agreement.
- 2.. The claim of Trackman B. R. High is denied.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


C. F. FOOSE, EMPLOYE MEMBER


H. H. PAYNE, CARRIER MEMBER

DATED:


April 17, 1985