

PUBLIC LAW BOARD NO. 2535

Joseph Lazar, Referee

AWARD NO. 7
CASE NO. 7

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) VS.
DISPUTE) JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY AND FORT WORTH AND DENVER
RAILWAY COMPANY

**STATEMENT
OF CLAIM:**

1. That the Carrier violated the Agreement when as a result of an investigation conducted October 2, 1980 they dismissed Trackman C. W. Webb, said dismissal being arbitrary, capricious and without just cause.
2. That Claimant C. W. Webb be reinstated to the service with seniority, vacation and other rights unimpaired and, additionally, he be compensated for loss of earnings suffered account the Carrier's improper action.

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 employee and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

On October 17, 1980, Claimant C. W. Webb was dismissed from the service of the Carrier for violation of Rule 661 of Burlington Northern Safety Rules in connection with altercation with another employee as evidenced by formal investigation afforded him at Teague, Texas October 2, 1980.

Certain facts are not in dispute. Claimant and another Trackman became involved in a heated discussion at approximately 3:15 PM, Friday, September 26, 1980, while working in the vicinity of Shiro, Texas. The evidence indicated that their discussion concerned the use of a particular maul during the course of which Claimant allegedly drew a small knife from his pocket. While it is evident that the knife was drawn, and Claimant and witnesses, including the other Trackman, leave no possible doubt that the knife actually was drawn by Claimant from his pocket, there was some doubt and conflict in the testimony as to whether the knife was ever opened.

The other Trackman testified that the knife blade was drawn against his arm, over his watch, and that the point of the blade was placed by Claimant into his leg; Claimant admits to the touching but denies that the knife blade was open.

Rule 661 of the Burlington Northern Safety Rules reads:

"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 do not conduct themselves in such a manner that the railroad will not be subjected to criticism and loss of good will, or who do not meet their personal obligations."

The testimony of both the Claimant and the other Trackman supply details of the altercation, and it is quite conceivable that witnesses in addition to those who testified may have supplied additional specifics of the altercation. In the instant case, questions of what started the altercation, or provocation, or self-defense on being attacked or being in imminent danger from the other Trackman, are not seriously raised. The decisive, controlling fact, and undisputed fact, is the fact that Claimant drew a knife in the altercation. Although the Carrier shares with the Employees responsibility for developing all material facts in the search for the truth, it would appear that material error was not committed by the Carrier's Conducting Officer in not bringing in additional witnesses, particularly when neither Claimant nor Claimant's Representative raised objection on this at the investigation (Transcript, p. 13) although the testimony at the investigation conceivably suggests a possible tampering or irregularity which might, in a proper case, constitute fundamental or prejudicial error.

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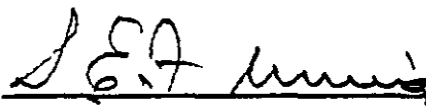
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The Carrier is obligated under law to provide a safe working place for its employees. Strict compliance by the employees with the requirements of Rule 661, and the objective enforcement of this rule by the Carrier, contribute to the security and safeguarding of the employees and of the Carrier. The rule stating that "Employees will not be retained in the service who are careless of the safety of themselves or others...quarrelsome or otherwise vicious..." is designed for a serious purpose and must be taken seriously by all concerned. The drawing of a knife by an employee for possible use on another employee is a plain violation of the rule and is not to be condoned.

A W A R D

1. The Carrier is not in violation of the Agreement.
2. The claim of Trackman C. W. Webb is denied.


JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER


S. E. FLEMING, EMPLOYEE MEMBER


B. J. MASON, CARRIER MEMBER

DATED: Dec. 16, 1981