

PUBLIC LAW BOARD NO. 2556

Award No. 24

Case No. 30
File No. MW-379

Parties Brotherhood of Maintenance of Way Employees

to and

Dispute Southern Railway Company

Statement

of Claim: Claim on behalf of former B&B Mechanic D. M. Wilson for reinstatement with seniority and other rights unimpaired and pay for all time lost as the result of his dismissal on November 5, 1981 following an investigation in which he was charged with insubordination and conduct unbecoming an employee on October 7, 1981, and with failing to follow instructions on October 8, 1981.

Findings: The Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated October 17, 1979, that it has jurisdiction of the parties and the subject matter, and that the parties were given due notice of the hearing held.

Claimant, on or about October 7, 1981, was part of Carrier's Bridge and Building Gang No. E-4. Said Gang were living in house trailers located at Lancaster, South Carolina. The 31 foot trailer in which Claimant was housed was divided in two sections, one for the Foreman's use and the other for the gang employees housed therein. The Foreman's section, as did the gang's section of the house trailer, had a door for entrance and egress. An interior door separated the two sections.

When the Foreman was away from the gang he would latch the interior door separating his quarters from the quarters of the other employees. Claimant previously objected to this practice. Apparently, on October 7, 1981, Claimant used a key, previously given him, to open the outside door to the Foreman's section of the trailer, entered, walked through and thereafter unlatched said interior door. When the Foreman discovered this, he requested and then instructed the Claimant to surrender

the key to the Foreman's section of the trailer. Claimant refused. He then, allegedly, threaten to "kick the damn door down."

As a result Claimant was notified, under date of October 12, 1981, to attend a formal investigation on the charge of insubordination and conduct unbecoming an employee on October 7, 1981. He was also charged with failure to follow instructions to attend a rules examination held on October 8th.

As a result of the investigation held on October 20, 1981, Carrier concluded Claimant to be guilty as charged. He was dismissed from service as discipline therefor.

The Board finds that Claimant was accorded the due process to which entitled under Rule 40 - Discipline and Differences. He was properly notified. He was capably represented, including Claimant's participation in examination of witnesses, who incidentally, were sequestered. Claimant exercised his right of appeal.

There was sufficient evidence adduced to support the conclusions reached by Carrier as to Claimant's guilt as to the charges placed against him. While there may have been a conflict in testimony between Claimant and others is not of significance here. Here, Carrier chose to give weight to the testimony of certain employees as against that of Claimant. The record shows no abuse of discretion therein.

There is no requirement, contractual or otherwise, that the necessary quantum of proof required be, as contended by the Employees, "proven beyond a reasonable doubt." Rather, it was whether there was a sufficiency of evidence adduced to support the conclusions reached by Carrier and we have so concluded.

The record, essentially, reflects that Claimant on October 7, 1981 while at work, was shown to have spoken to the B&B Foreman, D. R. Bookout, that Claimant had advised said Foreman that the door between his quarters and that of the gangs quarters was locked. Wilson asked the Foreman whether the door was still locked. The Foreman advised that it was. Whereupon, Claimant, allegedly, advised that if the door was locked when he arrived at the trailer that he (Wilson) would kick the door down and that if the Foreman was in the trailer he would "kick his ass out."

Claimant admitted that he refused to comply with the Foreman's instructions and surrender the key, that he threatened to kick the door and that it would not have been dangerous to give the Foreman the key.

The defense offered by both Claimant and the Organization was that the door should be left open in case of a fire. However, that fear was reasonably answered in the record. It reflects that there is a door in both the Foreman's and the Gang's quarters. In addition to that fact there are four windows in their section. Also, there are fire extinguishers in the car. The Foreman had left the key to the end door of his section with the B&B Mechanic.

The Foreman's rationale for keeping the door locked was that because where they were working was so close to his home that he commuted home; that when he arrived at the camp site that he had found the door unlocked, and that two of the lockers that are used to store personal gear in and company forms and records had been gone through.

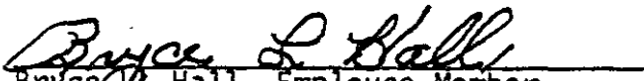
As to the Claimant's failure to attend the make up rules class, the record reflected that Claimant had missed not only the original rules class but also several make up rule classes. Claimant had been personally instructed by the B&B Supervisor, D. J. Haas, that he was to attend his annual rule exam in Columbia on October 8, 1981. Supervisor testified that he further advised Claimant that he would be paid for attending such class and that he would also be paid his mileage for driving his personal vehicle from Lancaster to Columbia. Claimant told the B&B supervisor that he would not drive his personal vehicle 100 miles for anyone.

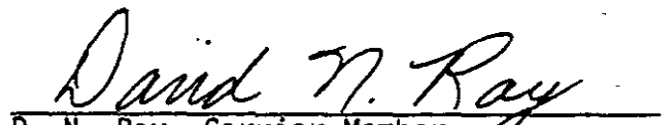
Clearly, the records shows that in both incidents Claimant's conduct was not that which one could ascribe as being that of a good employee. Claimant's manner and conduct was totally inconsistent with that expected of a good employee. He had all reasonable opportunity, if he felt aggrieved, to handle his complaints, if any, in an appropriate manner under the collective bargaining agreement. Claimant's beliefs as to what his rights may be are, apparently, different from those which the Agreement and others may believe them to be. Nevertheless and in any event, Claimant clearly was insubordinate and he had failed to comply with the

instructions of B&B supervisor to attend a rules class, which, incidentally, is also an act of insubordination.

In light of the charge of insubordination which is a most serious matter, the discipline assessed is deemed to be reasonable. The Board finds no cause therein to permit it to substitute its judgment for that of Carrier. In the circumstances, the claim will be denied.

Award: Claim denied.


Bryce L. Hall, Employee Member


D. N. Ray, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued September 10, 1983.