

PUBLIC LAW BOARD NO. 2752

AWARD NO. 7

CASE NO. 7

FILE NO. CL-80-39-PTRA

PARTIES TO DISPUTE:

Port Terminal Railroad Association

and

Brotherhood of Railway, Airline and  
Steamship Clerks

STATEMENT OF CLAIM

- "(1) The Association violated the Rules of the current Agreement between the parties including, but not limited to Rule 26, when on October 23, 1980, at 3:00 p.m., it dismissed Clerk J. R. Smith from its service for allegedly being quarrelsome and making vicious threats to an officer of the Association, and then did not prove those charges during the hearing on October 30, 1980.
- (2) The Association further violated those same Rules when it denied Claimant the unquestioned fundamental right to be judged by impartial and unbiased persons in the review and appeals procedure following the investigation.
- (3) Clerk J. R. Smith, Houston, Texas, shall be reinstated to the service of the Association with his seniority, vacation, insurance and all other employee rights restored unimpaired, clear his service record, pay him for all time lost including reimbursement for any medical, surgical or dental expenses incurred for himself or dependents to the extent that such payments would have been paid by Travelers Group Policy No. GA-23000 or Aetna National Dental Plan GP-12000 and reimbursement for premium payments he may have made in the purchase of substitute health, welfare, life and dental insurance."

OPINION OF BOARD

On October 23, 1980, the Claimant was advised that he was dismissed as an employee for allegedly making "vicious threats" to a Carrier Official, and for being "quarrelsome", in violation of Rule 46. The alleged offense took place in a telephone conversation on October 20, 1980.

Subsequent to a hearing on the charge, the Carrier refused to alter the discipline of dismissal.

The Organization has raised certain procedural questions in its Submission concerning the role played by a witness who subsequently made a decision concerning guilt. As we review the record presented to us, the Organization made certain requests that the individual be designated as the Hearing Officer and also called the individual as a witness.

While it might have been a better procedure to then change certain lines of appeal; nonetheless, the Claimant, himself, set the matter into motion and we find no prejudice to the Employee.

Concerning the merits of the case, Rule 46 states:

"Employees who are careless of the safety of themselves or others, insubordinate, dishonest, immoral, quarrelsome, or otherwise vicious, will be subject to dismissal."

The Transportation Supervisor testified that he received a telephone call from the Claimant, and the Employee asked why he had changed certain hours of a job in the Car Records Department. During the ensuing discussion, the Supervisor stated that the Claimant said that "they" were going to bump and bid on key positions and that "they" would control and disrupt the operations of the railroad. Additionally, he stated that he was going to bump on the Crew Caller's job and lay-off so that he could control the Extra Board.

The Supervisor stated that he and the Claimant "...ended the conversation on a friendly note..." The next day, the Transportation Supervisor reported the conversation to his Superintendent. The Transportation Supervisor conceded that he had advised the employees that any business pertaining to the Clerks "would be handled through him at home, if necessary." He denies, however, that the conversation reported above was "off the record."

The telephone conversation was not "loud", nor were voices "raised"; but nonetheless the Superintendent felt that the conversation constituted a "vicious threat" because the Employee

stated he was going to exercise his seniority in such a manner as to disrupt the operation, and that the result of the disruption was explained.

The Claimant concedes that he called the Supervisor at the time in question, and that he made reference to changing the hours on certain jobs in the Car Records Department. However, he denies that he indicated that he would create a disruption in the manner described. He felt that the conversation was "off the record", and he denies that there was any "blackmail" implicit in the discussion.

Initially, the Board notes that it is not incumbent upon us to resolve questions of credibility. In order to have sustained the discipline of discharge, it is obvious that the Carrier resolved credibility questions against the Employee and in favor of the Supervisor, and we will not disturb that finding. However, that does not dispose of the case.

While we will certainly agree that it is inappropriate for an employee to contact a Supervisor at his home and engage in a conversation which can be construed as threatening of disruptive activity, at the same time we seriously question that the discussion amounted to "vicious" conduct, as we understand that word, and as we view it in the context of Rule 46. The Employee did not yell or raise his voice; the conversation ended on a friendly note; and the Employee was apparently stating what he could permissively do under the seniority and bidding provisions of the agreement and was pointing out what kind of disruptive activity could be effectuated.

Accordingly, we are unable to find vicious conduct under this record. We do feel that the Employee's conduct was uncalled for, and was conduct unbecoming an employee; and we find that the charge is broad enough to include some degree of discipline for such conduct. Accordingly, we will uphold a ninety (90) day suspension.

#### 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.

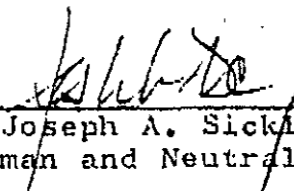
This Board has jurisdiction over the dispute involved herein.

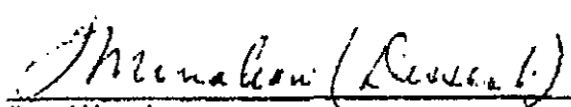
The parties to said dispute were given due and proper notice of hearing thereon.

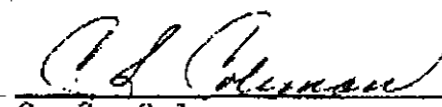
AWARD


1. Claim sustained to the extent that disciplinary action in excess of a ninety (90) day suspension is set aside.

2. Carrier shall comply with this Award within thirty (30) days of the effective date.

  
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Joseph A. Sickles  
Chairman and Neutral Member

  
\_\_\_\_\_  
T. Minahan  
Carrier Member

  
\_\_\_\_\_  
C. S. Coleman  
Organization Member

  
\_\_\_\_\_  
DATE

PUBLIC LAW BOARD NO. 2752

AWARD NO. 7

CASE NO. 7

INTERPRETATION NO. 1

PARTIES TO DISPUTE:

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and

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STATEMENT OF CLAIM

"(1) The Association violated the Rules of the current Agreement between the parties including, but not limited to Rule 26, when on October 23, 1980, at 3:00 p.m., it dismissed Clerk J. R. Smith from its service for allegedly being quarrelsome and making vicious threats to an officer of the Association, and then did not prove those charges during the hearing on October 30, 1980.

(2) The Association further violated those same Rules when it denied Claimant the unquestioned fundamental right to be judged by impartial and unbiased persons in the review and appeals procedure following the investigation.

(3) Clerk J. R. Smith, Houston, Texas, shall be reinstated to the service of the Association with his seniority, vacation, insurance and all other employee rights restored unimpaired, clear his service record, pay him for all time lost including reimbursement for any medical, surgical or dental expenses incurred for himself or dependents to the extent that such payments would have been paid by Travelers Group Policy No. GA-23000 or Aetna National Dental Plan GP-12000 and reimbursement for premium payments he may have made in the purchase of substitute health, welfare, life and dental insurance."

### INTERPRETATION

In April of 1982, the Board issued its Award in this Case, which, in essence, sustained a ninety-day suspension but set aside the dismissal from service and ordered that the claim be sustained concerning any disciplinary action in excess of said ninety-day suspension.

In asserted compliance with Award No. 7, the Carrier has made certain "straight time" payments to the Claimant, but has failed to pay for overtime, which the Organization asserts would have been earned, has failed to pay for holidays falling on Saturdays, and has not reimbursed the Employee for medical, surgical or dental expenses incurred for himself or dependents, to the extent that such payments would have been paid by insurance policies.

The purpose of a sustaining award in this type of dispute is to not only restore the Employee to service with retention of seniority, but also to compensate him for the amounts of money which he otherwise would have earned. In reaching this interpretation, it is important to realize that the Board, in essence, is stating that the Company's action was inappropriate and, therefore, the Carrier is required to place the Employee in the position he would have occupied had the improper action not been taken, to the extent that such a result is possible to calculate.

The Statement of Claim appearing on Page One of the Employee's Submission to this Board seeks, in addition to reinstatement with seniority, vacation, insurance, pay for "...all time lost including reimbursement of any medical, surgical or dental expenses incurred for himself or dependents..." Interestingly however, the Statement of Claim which appears on Page One of the Carrier's Submission to this Board states that he be paid "...for all time lost, including any overtime he could have earned, and that he be reimbursed for any medical, surgical or dental expenses incurred for himself or his dependents..."

While the Board cannot account for the inclusion of overtime considerations in the Carrier's recitation of the Statement of Claim, when said words do not appear in the Organization's version of the "claim"; nonetheless, the Carrier's Manager of Personnel and Labor Relations obviously understood the claim can be broad enough to include overtime payments. Yet, in the November 17, 1980 Declination by that

same Carrier Official, it is argued that the "additional compensation" not provided under the Agreement, i.e. the medical payments, is improper, but no such allegation is made concerning overtime payments.

It is well established in determinations of the Railroad Adjustment Board and Public Law Boards that a Carrier is obligated to object while the matter is still under review on the property -- if it objects to the claims sought by the employees. While, obviously, the Carrier objected to any restoration to service or any reimbursement, the documents of record indicate that said objection was based upon the fact that it felt that the Employee was guilty of the charge, and not because the request was not broad enough to include overtime.

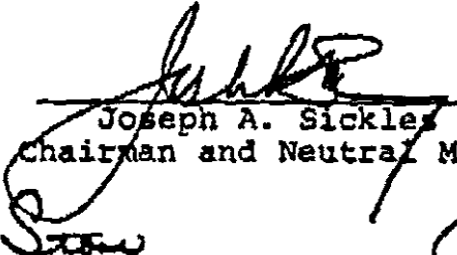
It is the interpretation of this Board that the claim is broad enough to include reimbursement for overtime, if it can be reasonably established that the Employee would have worked certain overtime during the time of his absence (except for the first ninety days). Moreover, it is apparent to us that the former Carrier Official who wrote the submission was aware that the claim was that broad, but no objection was made to the Board concerning the extent of the request.

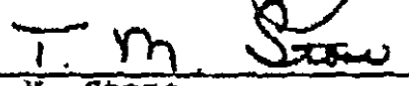
Concerning the medical, surgical and dental expenses, once again the Board is of the view that the Carrier has an obligation of restoring the individual to the status he would have enjoyed had he not been terminated, if that is reasonably possible. Thus, it appears to this Board that it is appropriate for the Carrier to reimburse the Employee for medical, surgical or dental expenses reasonably incurred for himself or his dependents which would have occurred in the normal course and which would have been paid by the Travelers or Aetna Policies. Concerning any other compensation not specifically mentioned herein, if the Employee would have been reimbursed in certain amounts had he remained on the active payroll, it is appropriate that he be reimbursed under this Interpretation.

The Board remands the matter to the parties to ascertain the reasonable amount of overtime which would have been worked by the Employee and paid for by the Carrier, if such a computation is possible; and for the parties to ascertain the amounts of medical, surgical expenses incurred, and any other amounts reasonably due. The Board will retain jurisdiction of this

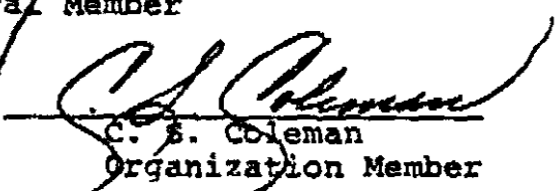
matter and will issue a final decision on the extent of damages, if the parties are unable to resolve the issue.

This Interpretation No. 1 to Award No. 7 is issued this 6<sup>th</sup> day of ~~December, 1983.~~  
MARCH, 1984

  
 Joseph A. Sickles  
 Chairman and Neutral Member

  
 T. M. Stone  
 Carrier Member

*I dissent*

  
 C. S. Coleman  
 Organization Member

DATED March 6, 1984 at Houston, Texas