

Award No. 4
Cases Nos. 9 and 10

PUBLIC LAW BOARD NO. 2778

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

-and-

BALTIMORE AND OHIO RAILROAD COMPANY

Statement of Claim:

Carpenter J. E. Cohan be compensated for loss of thirty (30) days including overtime and records of Carpenter J. E. Cohan and Carpenter Foreman Jewell be expunged of all charges.

Findings:

Foreman Jewell ordered claimant Cohan, as well as two other employes, to stop drinking beer in a camp car located on Carrier property. According to Mr. Jewell, he told them to quit drinking because they were becoming

intoxicated and he thought that there might be trouble. He left the car when it appeared that a confrontation might result between Mr. Cohan and him. He had addressed his remarks to Mr. Cohan since, in his opinion, Mr. Cohan was the most boisterous of the men.

Claimant Cohan followed Foreman Jewell out of the car. Fearful of assault, claimant took out his pocket knife and threatened to cut Mr. Cohan if he came closer. After an exchange of words, Mr. Cohan hit claimant in the mouth.

Mr. Cohan's testimony does not differ substantially from Foreman Jewell's testimony in material respects. One of the employees present at the time, Mr. Bryant, testified that Mr. Cohan was boisterous and provocative and "got mad" when Mr. Jewell told them to stop drinking. Mr. Clary, also in the car at the time, testified that he had a feeling that "there might be trouble that evening" from Cohan's "tone of voice."

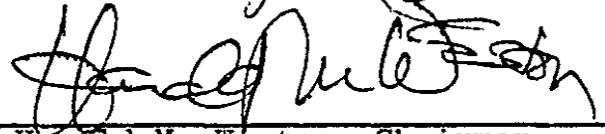
While the Foreman's production of a knife at a sensitive moment gives rise to some concern as to the quality of his judgment, we are satisfied that Carrier's findings are based on substantial credible evidence and that no persuasive reason exists for substituting our judgment for that of Carrier in this matter. The incident flowed from reasonable instructions given by a foreman in the course of his regular duties in the interest of protecting his men

and safeguarding Carrier's property.

AWARD:

Claim denied

Adopted at Baltimore, Md., February 2 1983.



Harold M. Weston, Chairman


Carrier Member
Employee Member