

PUBLIC LAW BOARD NO. 2960

AWARD NO. 101
CASE NO. 136

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The thirty (30) day suspension assessed Machine Operator M. R. Cartwright for allegedly being quarrelsome, not conducting himself in an orderly manner and failing to comply with the foremans instructions was without just and sufficient cause, arbitrary and capricious. (Organization File 6D-4239; Carrier File 81-84-72-D).
- (2) Machine Operator M. R. Cartwright shall be allowed the remedy prescribed in Rule 19(d).

OPINION OF THE BOARD

This Board, upon the whole record and all of the evidence, finds and holds that the Employee and Carrier involved in this dispute are respectively Employee and Carrier within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over the dispute involved herein.

On November 8, 1983, the Carrier directed the Claimant to attend an investigation on the following charge:

"Your responsibility for being quarrelsome and not conducting yourself in an orderly manner and failing to comply with instructions from Assistant Foreman at approximately 2:15 pm on October 31, 1983, in the Colony, Wyoming vicinity while employed as Machine Operator."

Subsequent to the investigation, the Claimant was assessed the discipline now on appeal to the Board.

The Carrier argues that the record established that the Claimant became argumentative and quarrelsome when confronted by the Assistant Foreman, and threatened him with bodily injury. Moreover, they contend that the excuse used by the Claimant for not complying with the instructions is not valid. They suggest, citing Third Division Award 22798, that if the Claimant believed a safety hazard existed, the burden was upon him to prove that it existed. They assert it is unrefuted that other employees continued to perform the same work the Claimant was directed to perform, and they sustained no injuries. Thus, they conclude the instructions did not constitute a safety hazard, and the Claimant must be found to have been insubordinate.

The Organization claims that discipline is an abuse of discretion. They argue that the incident would not have happened had it not been for the aggressive and belligerent actions of Assistant Foreman Goeden. In addition, they contend that his actions not only induced the Claimant's behavior, but in fact, perpetuated the incident. They base this on the testimony of the Claimant.

There is little doubt that the Claimant, without justification, refused to comply with the instructions of the Assistant

Foreman. Nor, is there any doubt that he was quarrelsome and threatened the supervisor.

However, there is also no doubt that the Assistant Foreman's behavior was equally deplorable. Even the Assistant Foreman's testimony admits this to a certain degree. At one point during the argument, the Assistant Foreman threw his hard hat down, and in response to the Claimant's comment that "he was going to kick his ass after work", invited him to settle the matter "down in the weeds". In addition, there is evidence that the Assistant Foreman mercilessly berated and badgered the Claimant in response to his reluctance to perform the task to which he was assigned.

This Board believes employees, even those who refuse to comply with reasonable instructions, are entitled to more dignity in treatment than was afforded the Claimant. The Board cannot accept 30-days discipline in the face of this kind of behavior on the Assistant Foreman's part.

On the other hand, the Claimant's actions were not fully justified, and he cannot be completely exonerated, nor can his behavior be tolerated.

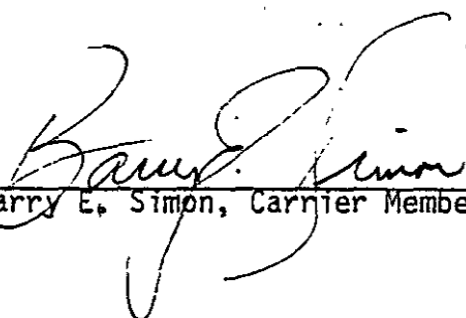
In view of the Assistant Foreman's behavior, the Board believes that significant mitigation exists. Thus, because of that behavior, a 30-day suspension is excessive.

AWARD:

Reduce the suspension to 15 days. The Carrier is ordered to compensate the Claimant for time lost.


G. I. Vernon, Chairman


H. G. Harper, Employee Member


Barry E. Simon, Carrier Member

Dated: Sept 10/1985