

PUBLIC LAW BOARD NO. 2960

AWARD NO. 33

CASE NO. 45

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 dismissal of Trackman J. M. Rhoden was without just and sufficient cause, unwarranted and excessive. (Organization's File 9D-2022; Carrier's File D-11-17-389)

(2) Trackman J. M. Rhoden shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD:

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

On June 18, 1981, The Carrier directed a letter to the Claimant.

It read in pertinent part as follows:

"You are directed to appear for formal investigation as indicated below:

Date: Wednesday, June 24, 1981

Time: 12:30 p.m.

Place: Conference Room, Administration Building, Proviso Yard

Charge: To determine your responsibility in connection with the altercation with a fellow employee while on duty, which resulted in an injury at approximately 7:30 a.m. on June 18, 1981, at the East Five Yard Office."

Subsequent to the investigation, the Claimant was dismissed. The Carrier argues that the charge against the Claimant was proven and the dismissal assessed warranted. The Claimant admitted that he was involved in an altercation and that he cut Mr. Glover with a knife. By his own admission the Claimant was in violation of Rules 7 and 11 which read as follows:

"7. Employees are prohibited from being careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or conducting themselves in such a manner that the railroad will be subjected to criticism and loss of good will, or not meeting their personal obligations.

11. Playing practical jokes, scuffling, wrestling or fighting while on duty or on Company property, as well as throwing of tools, materials or other objects is prohibited."

The Carrier argues that it cannot condone physical altercations of this nature and in view of the serious nature of the charge, discharge is justified.

The Organization submits that prior to starting time on June 18, 1981, the Claimant and another employe (L. Glover), who was having an affair with the Claimant's wife, became involved in an altercation. They assert that the altercation was preceded by verbal affront and physical aggression from Mr. Glover. It is of particular importance to the Organization that even though Glover was the aggressor, he was assessed only a 60-day suspension while the Claimant was dismissed from service. Such action is discriminatory and cannot stand. To this end, they cite Third Division Award 23855. Thus under the circumstances the Carrier's decision to dismiss the Claimant represents an abuse of discretion and excessive discipline.



It is the conclusion of the Board that there is more than substantial evidence to support the charge and to support the Carrier's decision to discharge the Claimant. There is little doubt that the Claimant during an altercation with Mr. Glover assaulted him with a knife. Mr. Rhoden, in a clear and unequivocal manner, admitted to cutting Mr. Glover with a knife. The Organization argues that the discharge is unfair, suggesting that Mr. Rhoden's actions were in defense to Mr. Glover's aggression and thus were provoked. They also note that discharge is excessive in comparison to the 60-day suspension received by Glover. However, after reviewing the record, it is the conclusion of the Board that a reasonable basis existed to distinguish the treatment of Glover and Rhoden based on their varying degrees of responsibility. Even assuming for the sake of argument that Glover was the aggressor and acted in the manner toward Rhoden as Rhoden claimed, nothing would justify the assault with a deadly weapon. In respect to Rhoden's conduct, it is extremely serious, more so than Glover's and thus is deserving of discharge.

AWARD

Claim denied.



Gil Vernon, Chairman


J. D. Crawford, Carrier Member
H. G. Harper, Employee Member

Date: June 28, 1983