

PUBLIC LAW BOARD NO. 2960

AWARD NO. 39

CASE NO. 75

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employes

and

Chicago & North Western Transportation Company

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman W. R. Brockman for allegedly threatening his Foreman on October 9, 1981, was without just and sufficient cause, arbitrary, and wholly disproportionate to the charge. (Organization's File 3D-2544; Carrier's File D-11-1-473)
- (2) Trackman W. R. Brockman 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 Employee and the 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 October 12, 1981, the Carrier directed the Claimant to appear for a disciplinary investigation to be held October 15, 1981, on the following charge:

"Your responsibility, if any, for your alleged violation of Rule #7 of the current General Regulations and Safety Rules (Eff. 6-1-67) when you allegedly threatened Foreman W. L. Davis at approximately 6:15 PM, Friday, October 9, 1981."

Rule #7 reads as follows:

"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."

Subsequent to the investigation, the Claimant was dismissed.

In support of the discipline, the Carrier relies primarily on the testimony of Foreman Davis. The incident had its roots in Davis' decision, upon instructions from the dispatcher, to tie up his Gang and Crane at Camp Grove rather than Broadmoor, Illinois. It is apparent that the Claimant took exception to this. Davis testified:

"...Mr. Brockman came running stopped and picked up a stick and hit it on the side of the bender and broke it in half, I think it was a spike maul handle, I'm not sure and he come up and grabbed me by the shirt pushed me against the car and said he wasn't going to leave the crane in there he wanted to go home and said Mr. Saathoff was going to go with him we'll (sic) I told him I couldn't do that the dispatcher told me to go to Camp Grove and tie up the crane so he stand there a few minutes and released me..."

The Carrier also directs attention to the testimony of Trackman Bartel who said the Claimant had "his fist cocked back." Even the Claimant, the Carrier points out, admits he grabbed the Foreman.

The Organization argues, based on the Claimant's testimony, that he was fooling around and was not serious. Moreover, they believe the seriousness of the offense is mitigated by the fact--as asserted by the Claimant--that Foreman Davis often grabbed people by the arms to get their attention. In their submission they make reference to a disciplinary suspension being assessed against Foreman Davis a year later for a similar situation. Thus, they believe dismissal to be excessive and inappropriate.

In consideration of the arguments and the evidence, it is the conclusion of the Board that there is substantial evidence to support the Hearing Officer's finding of guilt and that dismissal was appropriate.

Although no other witnesses saw Mr. Brockman grab a stick or similar instrument, it is uncontroverted that he ran toward and grabbed Davis and shoved him against a car and, at a minimum, raised his fist. This is seriously inappropriate conduct.

. In regards to dismissal being excessive, it cannot be believed that the Claimant's conduct was just horseplay. There is no positive indication in the record that Brockman claimed, at the time, it was horseplay. Brockman also claimed he had heard, prior to the incident, that Davis was out to get him. If this were true, it is hard to believe that the Claimant would engage in horseplay that could so easily be interpreted as gross misconduct.

In reference to Foreman Davis' conduct one year after this incident, it is hardly relevant. The discipline must be judged based on the facts known at the time. Further, the record isn't well enough developed to make a valid comparison. While the Claimant contended that the Foreman made it a habit of grabbing people, his assertion was unconfirmed by other witnesses so as to justify the decision to discredit his testimony. The discharge for such a serious incident was also not mitigated by a long record of good service. The Claimant had been employed for only approximately one year, and his record contains reference to other disciplinary incidents.

In view of the foregoing, the Claim must be denied.

AWARD: The Claim is denied.

GIL VERNON

Gil Vernon, Chairman

H. G. Harper

H. G. Harper, Employee Member

J. D. Crawford

J. D. Crawford, Carrier Member

Dated: Dec. 23, 1983