

PUBLIC LAW BOARD NO. 3445

Award No. 27
Case No. 27

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

And

Southern Railway Company

STATEMENT OF CLAIM:

Claim on behalf of T.L. Fannon asking that he be restored to service with seniority and other rights unimpaired and paid at his respective rate for all time lost as a result of his dismissal from service effective December 16, 1983 on the charges of insubordination and conduct unbecoming an employee.

FINDINGS:

Claimant entered Carrier's service on August 26, 1971, and at the time of the incident in question was employed as a Foreman Operator.

Claimant was notified to attend an investigation concerning charges that he was insubordinate and acted with conduct unbecoming an employee on December 8, 1983. An investigation was held on December 15, 1983. By letter dated December 16, 1983, Claimant was informed of his dismissal from service for his culpability concerning the aforementioned charges.

The issue to be decided in this dispute is whether Claimant was dismissed by Carrier for just cause under the Agreement.

The position of the Carrier is that Claimant was guilty of insubordination and conduct unbecoming an employee on the date in question. In support of its position, the Carrier first cites the testimony of Supervisor Gilchrist, who testified that Claimant indicated to him that he felt that he had been treated unfairly and that he subsequently threatened him with physical abuse. Gilchrist further testified that Claimant pulled out a knife and refused to put it away when ordered to do so. The Carrier contends that Gilchrist's testimony clearly indicates that Claimant was insubordinate and threatening.

The Carrier further contends that Gilchrist's testimony is more credible than that of Claimant's, particularly in light of the fact that Gilchrist testified that he liked Claimant and had had no prior problems with him. The Carrier maintains that Gilchrist had no motive to lie, while Claimant's testimony is self-serving and lacks credibility. The Carrier cites several awards holding that it is within its purview to weigh credibility of witnesses, and concludes that it did not abuse its discretion by finding Claimant culpable of the charges proffered.

Finally, the Carrier maintains that the discipline imposed was not excessive. The Carrier alleges that the offense alone would merit dismissal. The Carrier concludes that in light of the offense committed and Claimant's prior disciplinary record, dismissal was clearly warranted.

The position of the Organization is that Claimant was unjustifiably dismissed from service by Carrier. The Organization

contends that testimony brought out at the hearing indicated that Claimant was harassed by Gilchrist. Specifically, the Organization cites the testimony of Claimant wherein he stated that Gilchrist told him that "he wouldn't quit until he got me fired". The Organization further cites Claimant's testimony where he indicated that at no time did he threaten Gilchrist. The Organization maintains that Claimant's testimony establishes that the charges brought against him were unfounded. The Organization further maintains that the conflicting testimony at very least creates enough doubt to render the Carrier's findings unsupported by substantial evidence.

After review of the entire record, the Board finds that the dismissal should be reduced to a lengthy suspension.

It is not the purpose of this Board to rehear an investigation that the Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

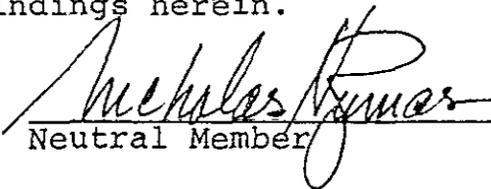
The Carrier has established through substantial, credible evidence that Claimant was guilty of conduct unbecoming an employee on the date in question. We agree with those awards cited by Carrier holding that Carrier may determine issues of credibility so long as it does not abuse its discretion. In this case, credibility is of paramount importance since only Claimant and Gilchrist were privy to the conversation that took place on December 8, 1983. We find that the Carrier did not abuse its discretion in finding Gilchrist's testimony more

credible than that of Claimant. The Claimant clearly had strong self-interest in this Claim; and there is little indication that Gilchrist had any personal stake in the Claim at hand. Furthermore, Gilchrist's testimony indicated that he had not previously had any problems with Claimant, further indicating a lack of motivation to create falsehoods. This fact was not refuted by the Organization. Overall, we find that Carrier was within its right to find Gilchrist's testimony to be the more credible, and to weigh it accordingly in coming to a decision.

Notwithstanding the above, we find that Claimant must be reinstated to service. We first note that Carrier failed to establish any specific insubordination committed by Claimant. Furthermore, Gilchrist's testimony indicated that Claimant had never been disobedient or a problem prior to this incident. Finally, we do not find that one prior disciplinary action necessarily constitutes justification for dismissal. We, therefore, find Claimant entitled to reinstatement, with seniority unimpaired, but with no pay for time lost. Threatening an employee of the Carrier is a serious offense, particularly when a potentially dangerous weapon is produced. Such conduct warrants a lengthy suspension.

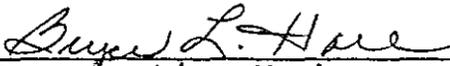
AWARD:

Claim disposed of per Findings herein.



Neutral Member


Carrier Member


Organization Member

Date: 11/13/85