

PUBLIC LAW BOARD NO. 3445

Award Number: 53

Case Number: 53

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant W. D. Benentt, allegedly charged with General Regulation GR-12 and Safety Rule 1028 while on duty or on Company property approximately 3:45 p.m. Monday, January 11, 1988. Employee requests reinstatement with all seniority rights unimpaired, paid for all time lost until restored to duty beginning February 1, 1988.

FINDINGS

Claimant entered Carrier's service in May 1981.

By letter dated January 13, 1988, Claimant was directed to attend a formal investigation on charges that he violated General Regulation GR-12 and Safety Rule 1028. The investigation was held on January 18, 1988. Based on evidence adduced at that investigation, Claimant was dismissed by letter dated February 1, 1988.

The question to be resolved in this dispute is whether Claimant was dismissed for just cause under the Agreement; and if not, what should the

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remedy be.

On January 11, 1988, after Claimant was released from duty, he, his brother and a third employe, J. M. Ceaser, reentered the Carrier's property in Ceaser's truck to pick up uniforms. Ceaser was returning Claimant's 410 gauge pump action shotgun and the weapon was in the truck with Claimant. Claimant sat at the passenger window. As the truck passed B & B Mechanic K. R. Robinson, Claimant waved the shot gun barrel out the window of the truck at Robinson and yelled "hey."

Rule GR-12 was removed from one rule book and reprinted in a revised rule book on December 1, 1987. The text of the Rule did not change.

Claimant's shotgun was inoperable at the time of the incident.

Rules GR-12 and 1028 provide:

GR-12. Employes are prohibited from having loaded or unloaded firearms in their possession while on duty or on Company property, except security and forestry officers authorized to do so in the performance of their duties or those given special permission in writing by the head of Police and Special Services.

1028. Scuffling, horseplay, practical jokes, and conduct of a similar nature, while on duty or on Company property, are prohibited.

The position of the Organization is that Claimant was unjustly dismissed, citing insufficiencies as to both procedure and the merits.

As to procedure, the Organization contends that the Carrier did not conduct a fair investigation. Specifically, the Organization asserts that the hearing officer was biased as evidenced by his leading witnesses and interrupting the Organization's presentation of its case.

On the merits, the Organization maintains that the Carrier has not met its burden of proof in that Robinson denied the shotgun was pointed at him. The Organization further contends that B & B Foreman W. McDonald provided untruthful and speculative evidence at the investigation which evidence, by implication, formed the basis of the Carrier's case. Finally, the Organization maintains that the discipline is too harsh.

The position of the Carrier is that Claimant was dismissed for just cause and that the evidence supports Claimant's guilt and dismissal. The Carrier maintains that the testimony proves Claimant had a firearm on the property in clear violation of Rule GR-12. Similarly, Claimant's waving the shotgun at Robinson, whether threateningly or not, constitutes horseplay, prohibited by Rule 1028. The Carrier contends also that the discipline assessed was not excessive.

After review of the entire record, the Board finds that the more appropriate disposition of this matter is reinstatement without back pay and issues Claimant a final warning.

The Carrier has established by substantive credible evidence in the record that Claimant had a firearm on the property and waved it at Robinson.

This is outrageous conduct. The fact that the shotgun was inoperable is of no consequence. It is a universally accepted rule of firearms safety that every weapon is to be presumed loaded and capable of firing. Many sorts of firearms can be used in a safe and lawful fashion, but no firearm is properly used by casually waving it around. Claimant's misuse of this shotgun is an insult to lawful, sensible gun users everywhere.

Claimant's behavior was a clear violation of Rule 1028 because the record shows his action was horseplay or practical jokery prohibited by that rule. As to the Rule GR-12 violation, the evidence in the record proves Claimant had his shotgun on the Carrier's property. The presence of the Rule in a revised rule book, having been transferred from the old rule book, does not relieve Claimant from the responsibility to abide by it.

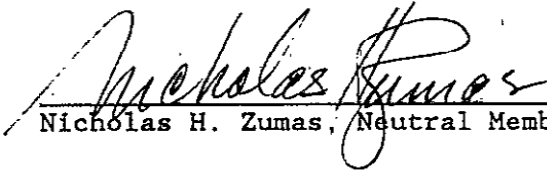
As to the procedural aspects of the case, while there was no violation of Claimant's rights or the fundamental fairness of the investigation, the hearing officer conducted the investigation in a fashion which detracted from the overall usefulness of those proceedings.


Under all the circumstances present in this matter, reinstatement without back pay and the issuance of a final warning is the more appropriate disposition.


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AWARD

Claim disposed of per Findings herein.


Nicholas H. Zumas, Neutral Member


Carrier Member


Organization Member

Date: JUNE 12, 1989