

PUBLIC LAW BOARD NO. 3445

Award No.: 65

Case No.: 65

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claim on behalf of James Lewis, Jr. and W. T. Hall requesting that they be restored to service with seniority and other rights unimpaired and paid for all time lost subsequent to October 17, 1988 as a result of their dismissal for violation of Norfolk Southern General Safety Rule 1028 and conduct unbecoming an employee for engaging in an altercation involving a knife which resulted in injury to Mr. Lewis.

FINDINGS

Claimant W. T. Hall entered the Carrier's service on December 12, 1970 and has never been the subject of disciplinary proceedings. Claimant J. L. Lewis, Jr. entered the Carrier's service on November 26, 1975 and has been suspended four times, dismissed once (and restored without back pay) and formally reprimanded twice.

By letters dated October 17, 1988, Claimants were directed to attend a formal investigation on charges they engaged in conduct unbecoming employees and violated Rule 1028. At the formal investigation on October 25, 1988,

evidence was adduced that led to their dismissals on November 7, 1988.

The issue to be resolved in this dispute is whether Claimants were justly dismissed under the Agreement; and if not, what should the remedy be.

On October 14, 1988, Claimants came off duty about 2:45 p.m. They returned to their camp trailer to pack their belongings for the weekend. Hall is a man of modest physical stature while Lewis is a large man. Lewis blocked Hall's way in the trailer and Hall cursed at him, using graphic profanity. An argument ensued between the two that included more cursing. Ultimately, Lewis grabbed Hall and slammed him into the wall of the trailer while ordering him not to curse at him again. Hall departed the trailer, but soon returned with a knife and challenged Lewis to "try that again." When Lewis came at Hall, Hall cut him in the forearm with the knife such that Lewis required surgery to repair damage to muscles and tendons.

Rule 1028 provides: "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 Claimants were dismissed without just cause contending that dismissal is a disproportionately severe punishment under the circumstances. The Organization admits that Claimants engaged in an altercation. By implication, the Organization contends that the punishment is too severe because Claimants were off duty at the time-- somehow out of the Carrier's jurisdiction--and because Hall did not intend

to harm Lewis.

The position of the Carrier is that dismissal was justified because, by their own admission, Claimants were scuffling and fighting; this was conduct unbecoming and a violation of Rule 1028. Moreover, the introduction of a deadly weapon into the scuffling introduced a degree of seriousness to the affair which renders it a dismissal offense. The Carrier maintains that both Claimants were responsible for this serious offense and that such conduct cannot be tolerated because it is so far outside the bounds of acceptable behavior.

After review of the entire record, the Board finds that dismissals were not warranted by this incident. The more appropriate remedy is reinstatement without back pay on a last chance basis, with seniority unimpaired.

The evidence in the record is that Claimants were off duty, though still on the Carrier's property. Their behavior while off duty can be relevant to their relationship with the Carrier. The dispute between them had been brewing for some time, as it can between men working closely for long periods. Fighting is clearly unacceptable behavior for employees, and its seriousness is compounded by the introduction of a weapon and by Hall's return to the trailer, having successfully exited. The difference in Claimants' physical sizes makes their reactions perhaps more understandable, but no more acceptable.


Since Hall was the aggressor in the verbal and the knife attack


(although not the physical attack), then his punishment should have been more severe than Lewis's. However, Hall's prior record was spotless, and he should not have been dismissed. It follows, therefore, that Lewis should not have been dismissed. Claimants behaved in an unbecoming fashion and in technical violation of the rules, but reinstatement without back pay is the more appropriate remedy.

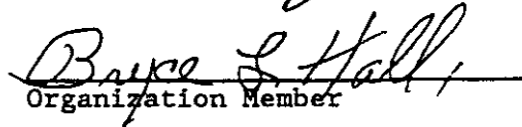
The Board finds that Claimants can still continue to be useful employees and therefore reinstates them. However, it cautions them most sternly that adherence to the rules and to the standards of conduct is essential to their continued employment. Any deviation from these rules in the future will be dealt with swiftly and severely.

AWARD

Claim disposed of per Findings herein.


Neutral Member


Carrier Member


Organization Member

Date: Dec 13, 1989