

PUBLIC LAW BOARD NO. 3460

Award No. 38

Case No. 38

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railway Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Section Laborer Elliott F. Richie was without just cause, wholly disproportionate to the alleged offense and dismissal was assessed on unstable testimony by Carrier's witnesses.
- (2) Section Laborer Elliott F. Richie now be reinstated with all seniority unimpaired and compensated for all time lost at his proper rate of pay."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a section laborer, had been employed by Carrier for approximately four months at the time of his dismissal, September 12, 1980. Claimant was notified by letter dated August 15, 1980 to attend an investigation on August 25 dealing with the facts relating to an injury allegedly sustained on August 7, 1980. Initially claimant alleges that he did not receive the notice of investigation with the five-day notice required by the rules, since he did not receive that letter until August 21. The record indicates, however, that claimant was notified of the fact that a certified letter was being held for him at the Post Office on August 18 and he simply failed to pick it up until August 21. Therefore, that allegation on the part of petitioner is without merit.

The record indicates that on August 11, 1980, on Monday, shortly after reporting for work, claimant complained of severe pains in his right foot and leg and stated that he had been injured while jumping from a machine while working on

August 7, 1980. Upon reporting the injury on August 11, he was taken to a clinic at which time he was examined and found to have torn ligaments and muscles in his right foot and leg and his leg was placed in a cast.

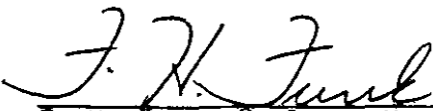
The transcript of the investigation reveals that claimant participated in a community event on the weekend of August 9 and 10. The two events in which claimant admitted participating included a tug of war and a car-smashing event (with a sledge hammer). In addition, the record indicates that claimant attempted to indicate the extent of his injuries on the previous date but was unable to procure any witnesses to verify this occurrence.

Initially, it must be made clear that the Board does not believe that an individual with torn ligaments and muscles could have actively participated in a tug of war, much less a car-smashing event. In addition it is obvious that if claimant had sustained a serious injury on August 7, he did not make a proper report on that date and there was no indication that any injury had occurred (the foreman on duty had no report of such incident). Thus, from the Board's standpoint, either way claimant was in serious violation of Carrier's rules. If he had an injury of a serious nature on August 7, he failed to report it. If he had such injury, further, he could not have participated in the events on August 9 and 10. Thus, from either point of view, it is apparent that claimant violated Carrier's rules with respect to safety and was guilty of the charges. Under the circumstances, the penalty of dismissal was appropriate.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


F. H. Funk, Employee Member


W. Hodynsky, Carrier Member

St. Paul, Minnesota
March 13, 1986