

PUBLIC LAW BOARD NO. 3460

Award No. 48
Case No. 48

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE Burlington Northern Railroad Company

STATEMENT
OF CLAIM

"1. The dismissal of Machine Operator (Section Laborer) S. M. Cobb for alleged 'violation of Rules M700, 701, 791(A), and 701(B) and conduct unbecoming an employee' was improper, excessive and wholly disproportionate to the charge leveled against him.

2. The claimant shall be reinstated with seniority and all other rights and benefits unimpaired and he shall be compensated for all wage loss suffered."

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.

On April 15, 1981, claimant was working as a machine operator. In the middle of the morning he was approached by Roadmaster Patterson and Assistant Roadmaster Palser. Mr. Palser attempted to deliver a notice of investigation to claimant. Claimant apparently objected to the notice and spoke loudly and excitedly to Palser. Patterson then asked claimant what was wrong and claimant responded by hitting Patterson above the right eye. Then he hit Palser with his fist on the side of the face, knocking him down, and continued to hit Patterson. Claimant then cursed, indicated that he would not work for these s-o-b's and quit and left the scene. The only difference in the factual version of the story is that claimant indicates that prior to his striking Patterson, Patterson put his hand on his shoulder and attempted to spin him around. Carrier insists that the claim in this instance was not appealed until some 3½ years after the last handling on the property and should be dismissed on the basis of the doctrine of laches. Carrier argues that the delay in over 3½ years in pursuing the claim was unreasonable and not within the contemplation of the Railway Labor Act. In addition, Carrier notes that on the merits it is obvious that claimant's unprovoked

assault on the two supervisors clearly warranted dismissal.

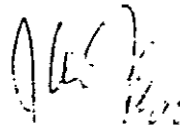
Petitioner argues that claimant was provoked by Patterson placing his hand on his shoulder and attempting to spin him around, thus triggering the incident. In addition, petitioner insists that dismissal was too severe a penalty under all the circumstances.

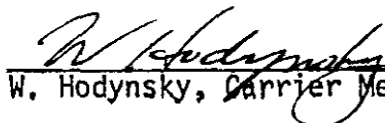
While it is clear that there was an unreasonably long period of time incurred during the handling of this dispute prior to being processed to this Board, it is this Board's view that the doctrine of laches is not applicable. Both sides bear some culpability for the delay in the handling of the dispute and, therefore, the question of laches is not dispositive of the dispute.

With respect to the merits, claimant's conduct is inexcusable. Even if his version of the incident were correct and the supervisor did place his hand on his shoulder, this does not excuse his violent assault on the two supervisors. He does not even remember what occurred after he took the first swing. Carrier was eminently within its rights in determining that claimant was guilty of the charges and the disposition of the matter by dismissal was appropriate.

AWARD

Claim denied.


I. M. Lieberman, Neutral-Chairman


W. Hodynsky, Carrier Member


F. H. Funk, Employee Member

St. Paul, Minnesota

July 3/ , 1986