

PUBLIC LAW BOARD NO. 3460

Award No. 8
Case No. 8

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
Burlington Northern Railroad Company

STATEMENT
OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) the dismissal of Section Foreman L. E. Smith, July 9, 1980, was without just and sufficient cause and wholly disproportionate to the alleged offense.
- (2) Section Foreman L. E. Smith be reinstated to his former position with all seniority and other rights unimpaired and be compensated for all time lost."

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, while foreman of a section gang, is alleged to have offered a female member of his gang a position paying a premium rate of pay conditioned upon her performing sexual favors for him. This activity was considered to be a violation of Carrier's rules and, following an investigation after which Carrier found him guilty, he was dismissed from service.

Petitioner insists that the accusing member of the gang did not tell the truth at the hearing and was said to be angered at the foreman for certain activities. Specifically, the Organization argues that she was difficult to work with and was grossly disliked by all members of her gang. The foreman in question had been asked by the crew to do something about her and he was, indeed, attempting to get her to ask for a transfer to another gang. In addition, the Organization alleges that the claimant herein had asked the member of the gang involved to

keep her shoes on when on duty and also had warned her about failing to wear safety equipment and properly perform her assigned work on the gang. For these reasons, the Organization contends she attempted to get back at the foreman by charging him with sexual harassment which was totally untrue.

Carrier argues that there was substantial evidence supporting Carrier's decision to terminate claimant. In this instance, the Hearing Officer credited Ms. DesCombes' testimony over claimant's. Carrier notes that Board's such as this are not empowered to resolve credibility conflicts. Furthermore, according to Carrier, her testimony was corroborated by the Assistant Roadmaster's testimony concerning her manner shortly following the incident in question and also supported by the testimony of another female employee who had experienced problems of a similar nature with the same supervisor. Carrier argues that it was correct in crediting her testimony over that of claimant in this instance and, hence, with the seriousness of the charge, the discipline assessed was appropriate.

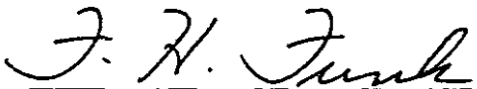
In this dispute the Board must observe that the only testimony which was relevant to the particular incident was one-on-one testimony directly in opposition to one another: that of the claimant against that of the accusing female employee. In such circumstance, while this Board having observed the demeanor of the witnesses might make its own credibility findings, that opportunity was not available. It is well established over many, many years that in matters of credibility the Hearing Officer is the only individual who may make such rulings. In this instance, the Hearing Officer obviously believed the employee's testimony and did not credit that of the supervisor. Based on this determination, there was substantial evidence to support Carrier's findings of the claimant's guilt and in view of the seriousness of the charges, the assessment of dismissal was appropriate. The claim must be denied.

AWARD

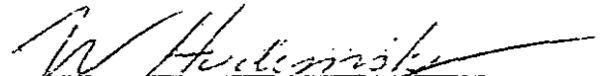
Claim denied.



I. M. Lieberman, Neutral-Chairman



F. H. Funk, Employee Member



W. Hodynsky, Carrier Member

St. Paul, Minnesota

September 30, 1984