

PUBLIC LAW BOARD NUMBER 3530

Award Number: 117

Case Number: 117

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Claimant, C.M. Lowe, 512 McDowell Avenue, N.W. Roanoke, VA 24017, was assessed a 10 day suspension on October 5, 1987 for alleged conduct unbecoming an employee. Claim was filed by the Employees in accordance with Railway Labor Act and agreement provisions. Employees request the suspension be removed from his record and paid for the 10 days with vacation and seniority rights unimpaired.

FINDINGS

Claimant entered the Carrier's service on August 26, 1981.

By letter dated August 13, 1987, Claimant was notified to attend a formal investigation on charges that he engaged in conduct unbecoming an employee. The investigation was held on September 18, 1987, after having been postponed once. By letter dated September 25, 1987, Claimant was assessed 10 days actual suspension based on evidence adduced at the investigation.

The issue to be decided in this dispute is whether Claimant was suspended for just cause under the Agreement; and if not, what should the remedy be.

On August 10, 1987, Claimant was assigned as a Spiker Operator. Assistant Rail Gang Supervisor D. S. Kirk was serving as his immediate supervisor. During the morning operations, Kirk noticed that the jaws of Claimant's spiker were worn and not functioning properly. After lunch, Kirk asked Claimant what he had been doing that morning as a means to determine why Claimant had not changed the jaws that morning. At the formal investigation, Kirk testified that Claimant responded with a string of profanity directed at first at the spiker machine, not at Kirk. However, when Kirk told Claimant to calm down, that he was simply inquiring to determine what corrective measures to take, Claimant began to use profanity directed at Kirk. Claimant further asserted that Kirk was picking on him and that Claimant would take orders from Supervisor D. R. Litton.

Claimant testified that he used profanity in his conversation with Kirk, but never directed it at Kirk. He further testified that Kirk used profanity toward him.

Claimant was held out of service pending the formal investigation.

The position of the Carrier is that Claimant was suspended for just cause under the Agreement. The Carrier contends that Claimant used profanity toward Kirk and that profanity toward a supervisor constitutes conduct unbecoming an employee. The Carrier cites various awards which hold that the industrial workplace is not a democracy and that employees are to follow orders when given and only later either question or grieve any dispute as to those orders. Based on these authorities, the Carrier maintains that the suspension is fully warranted, noting that a brief

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suspension is lenient since unbecoming conduct is a serious offense, punishable by dismissal. As to holding Claimant out of service, the Carrier reiterates its position that unbecoming conduct is a serious offense and argues that based on that, holding Claimant out of service complies with the current Agreement.

The position of the Organization is that Claimant was suspended without just cause. The Organization contends that Claimant's profanity was directed against the spiker machine while Kirk used profanity against Claimant. The Organization maintains that Kirk has an "attitude problem" which is manifested by his unjustifiably asserting his dominance over subordinate employees. It argues that if Kirk had truly wanted to prove Claimant's wrongdoing, he would have brought a third person to his meeting with Claimant.

The Organization also challenges the Carrier's decision to hold Claimant out of service. The Organization contends that it was unjustified because the Carrier's own action of reinstating Claimant after seven days shows that the Carrier did not deem Claimant's alleged offense to be very serious. In addition, the Organization maintains that the suspension is too harsh a discipline.

After review of the entire record, the Board finds that Claimant's suspension was for just cause under the Agreement.

The Carrier has sustained its burden of proving that the record contains substantive credible evidence that Claimant behaved in a manner

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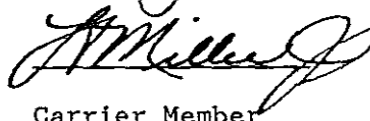
unbecoming an employee. The record provides adequate basis for the finding that Claimant used profanity against Kirk as well as the spiker machine and that Claimant challenged Kirk's authority. It is well settled that there is a clear hierarchy of authority in the industrial workplace. Superiors are entitled to a certain level of respect, so long as they conduct themselves properly; this provides for the safe and efficient operation of the Carrier's operation. Claimant's actions were sufficiently severe to justify holding him out of service and the subsequent suspension. The Carrier's actions were neither arbitrary, capricious nor discriminatory.

AWARD

Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: FEB. 22, 1990