

PUBLIC LAW BOARD NUMBER 3566

Award Number: 15
Case Number: 15

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

AND

BURLINGTON NORTHERN RAILROAD COMPANY

STATEMENT OF CLAIM:

Claim on behalf of Trackman D.N. Moncrief, requesting that Carrier return him to service immediately with pay for all time lost and with all rights intact, and further requesting that Carrier remove the charge from Claimant's service record.

FINDINGS:

On January 26, 1983, Claimant was assigned to Tie Gang T-1-10 working near Fred, Oklahoma. At approximately 7:25 that morning, Claimant became involved in a physical altercation with Assistant Roadmaster R.D. Honeycutt. Claimant was subsequently dismissed from service.

At the request of the Organization, a hearing was held in order to investigate the circumstances surrounding Claimant's discharge. On the basis of the evidence adduced during the investigation, Carrier determined that Claimant had violated General Rules 500, 501(A), 501(B) and 502(B), and that his discharge was therefore justified. The Organization filed a claim protesting Carrier's

actions and requesting that Claimant be returned to service with pay for time lost and with seniority and all other rights unimpaired. The claim was denied at all levels of appeal on the property, and the Organization then submitted the matter to this Board for resolution.

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


The record shows that on the day in question, Claimant approached Honeycutt at approximately 7:10 AM and asked him if the gang was going to work that day. Honeycutt informed Claimant that he had not yet decided whether to have the gang work or not. After Honeycutt decided that the gang should work at least three hours, Claimant approached Honeycutt's pickup once again. According to Honeycutt, Claimant jerked open the door of the truck and began striking Honeycutt repeatedly, all the while using profane and threatening language. Claimant then obtained a spike maul from the back of the truck and advanced on Honeycutt, at which time he was restrained by other members of the gang. Honeycutt's testimony was corroborated by several members of Claimant work gang; Claimant testified that he could not remember what happened during the time in question.

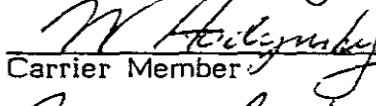
It is unclear from the record whether Claimant's behavior was caused by some mental problem or whether he was simply enraged at having to work on a rainy day. Though the Organization has presented evidence indicating that Claimant may have been suffering from a mental problem on the day in question,


there is no evidence in the record to show that Claimant would not commit a similar assault in the future. Accordingly, it cannot be held that the decision to dismiss Claimant from service was an abuse of Carrier's managerial discretion. The claim is therefore denied.

AWARD:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: February 1, 1985