

Public Law Board No. 3794

PARTIES  
TO  
DISPUTE:

Brotherhood of Maintenance of Way Employees  
and  
CSX Transportation, Inc.

STATEMENT  
OF  
CLAIM:

The dismissal of Trackman M. J. Bacote was without just cause and he should be reinstated with all benefits unimpaired and with back pay.

FINDINGS:

While Assistant Roadmaster Creech was observing trackmen lay rail, he noticed that claimant was distributing only two tie plates at a time along the roadbed. Mr. Creech told Foreman Coleman to have claimant distribute more than two plates at a time to speed up production.

A little later, when Mr. Creech observed that claimant was still distributing two plates at a time and ascertained that Foreman Coleman had instructed claimant to speed up the process, he spoke to claimant and asked him why he was not following instructions. According to Mr. Creech, claimant "started off with a violent temper," became argumentative, pointed his fingers at Mr. Creech's face, and said "he was not going to

carry more than two 115-lb. rail tie plates."

Mr. Creech's testimony is that he then took claimant out of service for insubordination and that claimant did not say anything in response "but you could tell that he was very mad with his temper."

Foreman Coleman corroborated Mr. Creech's testimony in essential particulars, pointing out that Mr. Creech instructed claimant three times to carry more than two plates before removing him from service. Mr. Creech also testified that claimant raised his voice during the discussion, but did not make any threatening remarks or do anything more violent than shake his finger at Mr. Creech's face.

Claimant was clearly wrong in this situation and guilty of serious misconduct. His duty was to comply promptly with Mr. Creech's orders without discussion. There is no indication that the instructions subjected him to any physical hazard.

Ordinarily, we would not interfere with Carrier's decision to dismiss claimant, although general conclusions in Mr. Creech's testimony as to "violent temper" are not helpful in the absence of detailed facts. It is enough that claimant refused to comply with Mr. Creech's direct order.

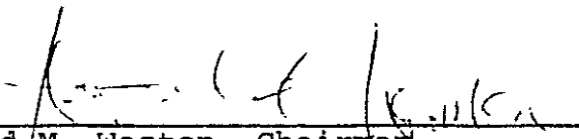
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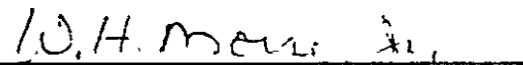
In our view, however, claimant should be given another chance to demonstrate that he can be an effective and cooperative worker. He has performed over 13 years work for Carrier and that service is entitled to consideration even though his record shows that he was out of service one additional year due to a dismissal on August 29, 1980 for "vicious or uncivil conduct." Carrier restored claimant to service on October 14, 1981 after that 1980 dismissal.

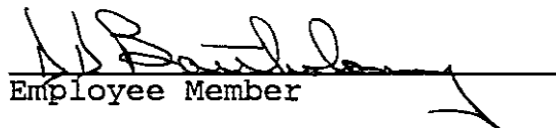
Claimant should make certain that he complies immediately with orders and not waste supervisors' time with objections and debate. It is his obligation to get along with and respect supervisory personnel and any further failures on his part to do so will constitute grounds for termination of employment.

AWARD: Claimant reinstated with seniority unimpaired, but without back pay. To be effective within 30 days.

Adopted at Jacksonville, Florida, March 17, 1987.

  
Harold M. Weston, Chairman

  
Carrier Member

  
Employee Member