

PUBLIC LAW BOARD NO. 3845

PARTIES TO THE DISPUTE

Brotherhood of Maintenance of
Way Employees

and

Norfolk and Western Railway
Company (Lake Region)

Case No. 12
Award No. 12

STATEMENT OF CLAIM

"Claim of the System Committee of the Brotherhood that:

- (1) The dismissal of Trackman Kennard Anderson for alleged insubordination, the use of profane, vulgar and abusive language to Assistant Manager-System Gang Tom King and assault to Tie Gang Foreman Loudon was without just and sufficient cause. [Organization File MW-CGO-84-15]
- (2) Trackman Kennard Anderson shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

OPINION OF THE BOARD

Uncontradicted testimony adduced at the investigation of this matter on December 11, 1984 established that Claimant, who up until November 15, 1984 had an unblemished seven-year service record with Carrier, was insubordinate in refusing to comply with his superior's lawful order to leave Carrier's property, repeatedly used profane, vulgar and abusive language toward them

and assaulted Assistant Manager - System Gang Tom King by striking him in the back of the head.

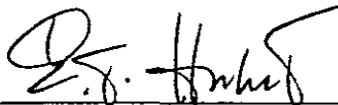
Claimant was not present at the investigation although Carrier made every reasonable effort to notify him of the proceeding in a timely manner. His absence, therefore, does not preclude the Board finding, as it does, that the hearing was fair and impartial, afforded Claimant full due process and was free of material procedural error.

On the basis of the investigation Claimant was dismissed from service on December 21, 1984. While Claimant's behavior might be explained in some manner by his displeasure at having been assigned the uncomfortable task of pushing plates on an extremely cold day, the actions of Claimant's supervisors cannot be viewed as rising to that level of provocation which could conceivably justify a physical assault.

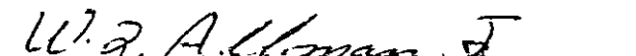
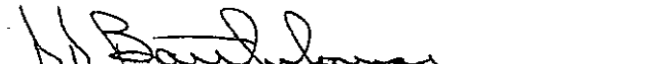
Carrier is entitled to protect its property and its employees. The dismissal in this case is, accordingly, neither unreasonable nor excessive discipline.

AWARD

Claim denied.



E.T. Herbert, Neutral Member


W.L. Allman, Jr., Carrier Member
D.D. Bartholomay, Employee Member

Date: April 13, 1987