

PUBLIC LAW BOARD NO. 4426

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES

"Organization"
VS.

CENTRAL VERMONT RAILWAY, INC.
"Carrier"

:
:
:
:
:
:
:
:
:

Award No. 9

STATEMENT OF CLAIM:

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant Eric Stetson was without just and sufficient cause based on arbitrary and capricious charges following an on-the-job injury.

(b) Carrier shall restore Claimant Stetson to service, with all seniority, vacation rights, and all benefits he enjoyed prior to his dismissal, and compensate him for all lost wages, including overtime.

OPINION OF THE BOARD

Claimant, E. Stetson, was discharged on April 30, 1987 for allegedly being insubordinate to his foreman, J. Kichner.

Upon being notified of his dismissal, the Claimant requested a hearing, which was held on May 13, 1987. On May 19, 1987, the Carrier informed the Claimant that his dismissal had been confirmed. Appeal was made through various levels of the grievance procedure, and was declined at all levels. The hearing before this Board took place on February 29, 1988. The Claimant

was informed of the hearing before this Board by certified mail, but he did not appear.

Events giving rise to the Claimant's termination began on April 27, 1987. The Claimant was working in a track gang that included Foreman Kichner and a third person. After the foreman assigned the Claimant certain duties, the Claimant expressed his displeasure and an argument resulted. The foreman nonetheless did not remove the Claimant from service. While working later that morning, the Claimant allegedly suffered an on-the-job injury. Although the Claimant reported to work the following two days, he did perform any field assignments due to his alleged injury. On April 30, 1987, the Claimant informed the Carrier that he was unable to report to work because his back was hurting. Later that day the Carrier informed the Claimant that he was terminated.

The Carrier maintains that the Claimant was properly terminated for insubordination to Foreman Kichner on April 27, 1987, which was uncovered through an investigation of the circumstances surrounding the Claimant's alleged injury also occurring that day. The Organization maintains that the Claimant was terminated because of his injury rather than insubordination, that in any event he was not insubordinate, and that the Carrier committed reversible procedural error by allowing the same Carrier official to act as charging, hearing, and reviewing officer.

The Board has determined that the Claim must be sustained.

The Board does not condone the Claimant's behavior towards his foreman on the day in question. The Claimant was needlessly hostile and disrespectful. Nonetheless, the record is clear that his poor behavior alone would not have resulted in discipline. Foreman Kichner, who has many years of experience with the Carrier, chose not to remove Claimant from service or pursue the matter further. It was only after the Claimant reported his injury that the Engineer of Tracks/Structures, C. Gura, who was not present on April 27, decided to discharge the Claimant. Although the Carrier now claims that the Claimant's reporting of his injury was only important insofar as it triggered an investigation into the underlying circumstances, it is difficult to believe that absent the Claimant's injury, Gura would have chosen to discharge the Claimant for conduct that Foreman Kichner did not even believe to be worthy of reporting to his superiors. In addition, while the parties dispute whether the Claimant properly performed his work assignment on April 27, it is clear that he did do a substantial amount of work.

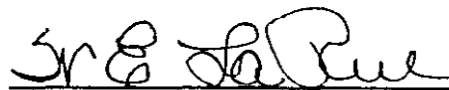
Moreover, the Organization has established a procedural deficiency in the Carrier's handling of this matter. Engineer of Tracks/Structures Cyril Gura was, in fact, the charging, hearing, and reviewing officer. It did not comport with due process requirements for Gura to assume all three roles, particularly in light of the unusual way in which charges were brought by Gura rather than the Claimant's foreman. The incompatibility of Gura assuming all these roles is evidenced on


page 59 of the transcript for the Claimant's hearing, where Gura, as hearing officer, refused to answer a question that would have been entirely appropriate for Gura, as the charging officer, to answer.


In these circumstances, the claim must be sustained. The Claimant is cautioned, however, that future disrespect for Carrier officials will not be tolerated.

AWARD

Claim sustained. Carrier shall reinstate the Claimant with full seniority. Carrier shall also compensate the Claimant for all money lost due to his improper termination, less outside earnings. All monies owed shall be paid within thirty days.


W. E. LA RUE,
Organization Member


J. J. WELCH,
Carrier Member 4/12/38


S. E. BUCHHEIT,
Neutral Member