

PUBLIC LAW BOARD NO. 4950

| | | |
|--|---|--------------|
| NEW JERSEY TRANSIT RAIL OPERATIONS, INC. | : | |
| "Carrier" | : | Case No. 23 |
| vs. | : | |
| BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES | : | Award No. 13 |
| "Organization" | : | |

STATEMENT OF CASES

P. Pierre - Dismissed from all Service.

OPINION OF THE BOARD

The incident triggering Claimant's termination occurred on March 29, 1989. Claimant was on that date allegedly instructed by Track Foreman W. Tidd to spike down a just installed rail. Claimant allegedly failed to strike the rail until Tidd had repeated his instructions several times. Claimant then allegedly made racial and sexual obscenities concerning Tidd and threatened Tidd with physical violence. In addition, Tidd observed Claimant throwing a spiking maul into the air which Claimant attempted, and failed, to retrieve.

The Organization raises numerous defenses on behalf of Claimant, including the following: Rule 26 (f) was violated as Claimant did not receive notice of discipline within the required 15 days. In addition, Claimant was charged with failing to follow instructions, not insubordination as now argued by Carrier. Furthermore, Foreman Tidd was as guilty as Claimant in

this matter, as he provoked the incident. Moreover, the Foreman did not hear any of the alleged racial or sexual obscenities. It is also notable that Claimant was not removed from work on the day of incident, and in any event he should not have been held out of service as there was not a major offense here involved. Claimant was also prejudiced through the hearing officer failing to conduct a fair hearing. In sum, what here occurred was a comedy of errors, and it resulted in the Claimant being discriminated against.

The Carrier maintains that the record evidence establishes that Claimant failed to follow instructions, made racial and sexual insults to Tidd, and threatened him with physical violence. According to Carrier this amply justified Claimant's discharge, particularly in light of the extremely poor record developed during his short service with Carrier, which included prior incidents of physical threats.

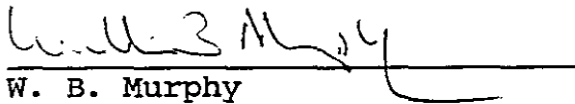
The Board has determined that the claim must be denied.

The record evidence clearly establishes that Claimant failed to follow the instructions of Foreman Tidd. In conjunction with this refusal, it is also clear from the record that Claimant made physically intimidating gestures towards Tidd and Claimant further threatened Tidd with physical violence by making statements to the effect that he would meet him after work "and we will see who is boss". Such physical intimidations and threats need not be tolerated by Carrier. Moreover, Carrier correctly notes that Claimant had a poor work record during his

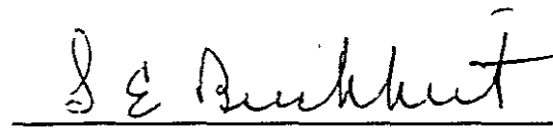
short service, which involved two prior suspensions. Finally, the Board finds no procedural errors by Carrier which warrant setting aside otherwise justifiable discipline. In these circumstances, the claim must be denied.

AWARD

Claim denied.


W. B. Murphy
Carrier Member


W. E. LaRue
Organization Member


S. E. Buchheit
Neutral Member