

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 48

System Docket No. BMW-329D

STATEMENT OF CLAIM

(1) Carrier's dismissal of Claimant Leonard Hughes was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(2) Claimant Hughes shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule 15 of the Scheduled Agreement.

FINDINGS

Following an investigative hearing held for joint review of two separate charges, the Claimant was dismissed from service. The specifications of the charges are as follows:

[1] It is alleged that while working as a trackman in a track gang on Tuesday, March 10, 1998, you became boisterous in conduct, by intimidating and threatening the safety of a fellow employee using profane and vulgar language.

[2] It is alleged that on March 12, 1998, you were in possession of an explosive device while on Amtrak property in the vicinity of the Rensselaer track department headquarters. It is further alleged you were not authorized by Amtrak to be in possession of an explosive device, and the device posed a potential hazard to Amtrak employees and others.

As to the first specification, this involved an incident between the Claimant and his Foreman following a lunch break. There were varying versions presented as to why the Claimant did not leave the "back shop" with the Foreman and the remainder of the crew to resume their duties. When the Claimant eventually joined the crew, the Foreman testified as to the following exchange with the Claimant:

So, maybe being a little obnoxious, I said . . . "So . . . who are you working with today?" At the time he [the Claimant] said, "Fuck you, Motherfucker. Who do you think you are I ain't playing your fucking kid games. . . ." I said, " . . . there's no reason to yell. Nobody's yelling here. . . . I didn't leave you at the shop." He goes, "Fuck you, you did too. You've done it before." [After further interchange, the Claimant] said, "Well, I'm telling them that I'm not working with you any fucking more and if I got to work with you then somebody's going to get fucking hurt."

The Foreman stated he genuinely felt threatened by the Claimant's words and eventually reported the matter, leading to the charge here under review. Another employee confirmed hearing the Claimant's "raised" voice and heard the Claimant state "somebody was going to get hurt". While the Claimant admitted to using profanity in addressing the Foreman, he denied making any threat.

The Board concludes that the Hearing Officer and the Carrier had sufficient justification to accept the Foreman's version of

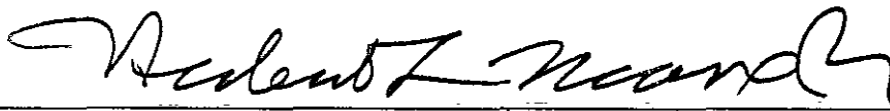
what occurred, particularly in view of the testimony of the other employee. There can be no basis to classify the exchange as "shop talk". While vulgar or profane language may indeed be employed on occasion, such language takes on a wholly different character when directed at another employee and in particular at a supervisory employee. When this is accompanied by a perceived threat of bodily harm, it becomes, as stated in the Carrier's Standards of Excellence, "unacceptable".

In sum, the Board finds the Carrier properly found the Claimant's conduct sufficiently offensive and potentially dangerous to warrant his dismissal.

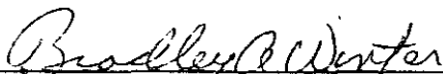
The second charge arises as a result of police investigation following the event discussed, above. The Claimant offered a variety of reasons to explain the presence of explosive material in his car, when it was subject to search. Given the fact that the unacceptable conduct of the Claimant was sufficient to warrant his dismissal, there is no need for the Board to make a further review of the Claimant's possession of the explosive in his vehicle or to any possible connection between the explosive and the Claimant's threat.

A W A R D

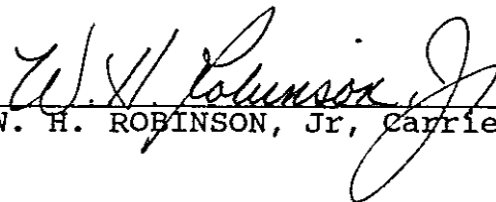
Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 2/9/99