

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 65

System Docket No. BMW-475D

STATEMENT OF CLAIM

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant Charles Straughter 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.

(b) Claimant Straughter 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

The Claimant was subject to an investigative hearing under the following specification:

It is alleged that on Tuesday, March 25, 2002 at approximately 8:30 a.m. you failed to follow a directive from your Foreman Andrew Patricelli to assist with securing the rail to a section of track located at the Rensselaer Station yard. Additionally, you left the job site without authorization; and a short time later became boisterous, irate and intimidating. When approached by Supervisor John Mercier and Foreman Patricelli, your conduct was judged to be unacceptable and you were removed from service at approximately 10:30 a.m. that same day.

Following the hearing, the Claimant was dismissed from service.

The Claimant, a Machine Operator "B", was on duty with a track repair crew on March 25, 2002. Other employees in the crew were Machine Operators "B" or "C". The Claimant was assigned to a Backhoe machine. At an early point in the crew's work, the Claimant was directed by the Foreman to leave his machine and assist other crew members in work on track ties and rail.

There are some inconsistencies in witnesses' testimony during the investigative hearing. A full examination of the record, however, clearly discloses that the Claimant was, at first, reluctant to join other crew members in track work. Once he had done so, he questioned the Foreman as to placement of a spike in a tie which the Claimant considered unsuitable. The Foreman testified that, when he directed the Claimant to secure the tie, the Claimant failed to do so and "threw his tool down and walked off the job". The Claimant testified that he "dropped the spike in the tie". What is not in question is that the Claimant left his assigned track location. Although he did not leave the general area, he improperly absented himself from his assigned work for an

extended period in what may only be considered as defying the Foreman's authority.

The Supervisor of Track came to the work area and was apprised of the Claimant's conduct by the Foreman. When the Track Supervisor attempted to talk with the Claimant and the Foreman, the record clearly shows that the Claimant was argumentative, loud, and uncooperative. The Claimant stated, according to the Supervisor, that he was "going home". Because the Supervisor wished to get written statements from employees concerning the incident, he properly insisted that the Claimant remain for this purpose.

Because of his unruly conduct, the Foreman determined that the Claimant would be replaced on the backhoe machine, presumably for the work at hand. This, too, created further resistance and argument from the Claimant.

Later, when the Supervisor determined that the Claimant should be removed from service (pending a hearing), the Claimant refused to accept the written notice and used abusive language to the Supervisor.

Testimony from a number of employees on the work crew did little to support or challenge the versions of the incident by the Foreman, Supervisor and the Claimant. The Board concludes that the Hearing Officer properly accepted the accounts of the Foreman and Supervisor as to the Claimant's continuing unsatisfactory and unacceptable conduct throughout the entire incident. Even if he believed he was improperly assigned to join in the track work, the

Claimant was or should have been well aware of the consequences of challenging or resisting his Foreman's directions.

Standing by itself, the sequence of events might well have warranted disciplinary action well short of dismissal. The Claimant, however, was previously disciplined for misconduct similar to that exhibited in the matter here under review. The Claimant had been dismissed from service (with another employee) for "discourteous and unprofessional conduct, including boisterous, intimidating, and threatening behavior". In Award Nos. 55 and 56 (May 11, 2000), the Board modified the dismissal to a six-month disciplinary suspension. In doing so, the Board stated as follows:

Substantial response by the Carrier is obviously warranted, both as a disciplinary penalty and as a corrective measure. . . . [The Claimants] must understand that any repetition of such unacceptable conduct could well lead to dismissal. (Emphasis added)

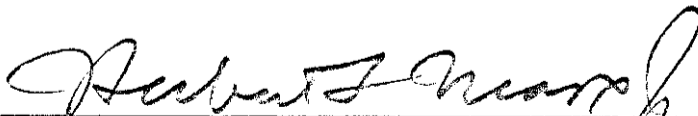
The Claimant was either unwilling or unable to be guided by this corrective warning. As a result, there is no basis for the Board once again to modify the Carrier's disciplinary action.

Accusations were raised that the discipline was motivated by the Claimant's race and that the Carrier's disciplinary actions are racially disparate. The Board was presented with no convincing evidence to support such contentions.

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A W A R D


Claim denied.



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



B. A. WINTER, Employee Member



RACHELLE A. MIELE, Carrier Member

NEW YORK, NY

DATED: 10/14/03