

B-2438-5

Award No. 7
Case No. 7

PUBLIC LAW BOARD NO. 5696

PARTIES
TO
DISPUTE:

Burlington Northern Railroad Company

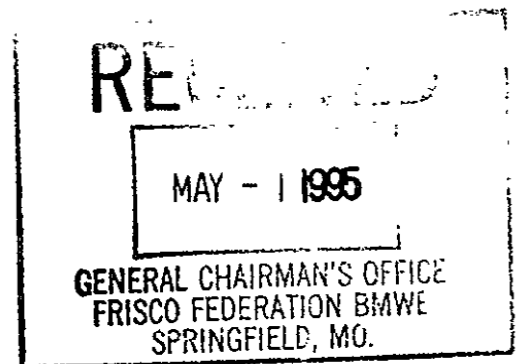
AND

Brotherhood of Maintenance of Way Employees

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

- (1) The discipline of dismissal imposed upon Claimant here for alleged responsibility in connection with an altercation which took place on June 3, 1994, while Claimant was assigned as a welder to a rail gang, was unwarranted and without just and sufficient cause and in violation of the Agreement.
- (2) As a consequence of the violation referred to above, Claimant's record shall be cleared of the charge leveled against him, and he shall be reinstated to his former position with all rights unimpaired and compensated for all wage loss suffered.



FINDINGS

Upon the whole record the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

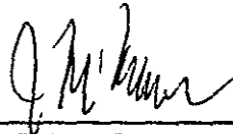
The transcripts of the investigation of this dispute indicates that Claimant herein was involved in an altercation with a fellow member of his rail gang on June 3, 1994, while staying at a Company-provided lodging at a motel in Lenexa, Kansas. There is no doubt, based on the testimony indicated, that Claimant, as well as his protagonist, were both involved in some drinking prior to the incident. The incident itself, initiated by name-calling and ultimately ending up in a physical brawl, was clearly attested to by witnesses, as well as admitted by both participants.

Petitioner insists that Mr. Campbell did not violate any Carrier rules since he was not on duty at the time of the altercation, nor was he responsible for the altercation. Furthermore, according to the Organization, Campbell did everything he could to prevent the altercation from taking place. Carrier, on the other hand, indicates that there was no question but that Campbell violated Carrier rules by involving himself in this altercation, and the evidence clearly attests to that.

The Board, having reviewed the transcript of the investigation, concludes that an altercation did take place and who the instigator of the altercation was is immaterial. It is apparent that Claimant, here, was responsible, at least in part, for the altercation escalating into a physical confrontation. Both the Claimant here and his protagonist both could have prevented the altercation from taking place. Neither chose to do so. From the standpoint of the Board, engaging in an altercation such as this, even when off-duty in a lodging sponsored by the Carrier, is unacceptable behavior, and as such, should be punished by severe discipline, including dismissal. In this instance, dismissal was appropriate based on all the facts and Claimant's past record.

AWARD

Claim denied.



I. M. Lieberman, Neutral-Chairman

Stamford, Connecticut
April 27, 1995