

PUBLIC LAW BOARD NO 5850

Award No.
Case No. 100

PARTIES TO DISPUTE:
(Brotherhood of Maintenance of Way Employees
(The Burlington Northern Santa Fe Railroad

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when on August 26, 1998, the Carrier assessed a Level S, 45-day suspension with 1-year probation to R.J. Delgado, for allegedly violation of Rule S-1.2.9 of the Safety Rules and General Responsibilities for all Employees, and Rule 1.7 of the Maintenance of Way Operating Rules, effective August 1, 1996, in connection with his alleged involvement in an altercation at or near Spruce, Colorado, on July 16, 1998.
2. As a consequence of the Carrier's violation referred to above, Claimant shall be reinstated to his former position with seniority restored, he shall be paid for all wages lost and discipline shall be removed from his record.

FINDINGS

Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.

As happens from time to time, horseplay, joking, verbal jousting escalated to an altercation with Claimant suffering an injury requiring 11 stitches when he was struck in the face by the safety hat wielded by his antagonist.

For good reason, the Carrier takes a very dim view of such conduct, and in pursuit of its obligation to provide a safe work place, does investigate such happenings immediately, imposing corrective measures where warranted.

Claimant testified at the investigation as follows:

- "A. Just...we'd been sitting in the van and, you know, just...to lead up to it, Jesus seemed to like to, always like (inaudible) the word harass, but

that's probably the only word I can use, you know. We were sitting in the van and he was continuing messing with me. But, I was trying to crouch down to ignore him and he was hitting me on the back of the head with his pack set antenna. I told him to stop, and he thought it was funny. He was laughing. I had this other guy, I heard him tell, he said that why, the reason he bid on this gang was to come mess with me. And, I repeatedly told him to stop. And, I mean, he always doing this. Normally, you know, I ignore it, you know, blow it all off all the time, but between what he told that guy and the way he was laughing and stuff like that, I guess, I mean, I did pour pop on him, but it was, you know, more of a...I had no idea he would have reacted the way he did. And, as far as, I mean, he's saying he hit upward, but that's not right. He did it with a downward motion, because when my hard had came down, that's what cut my, that's where the, my glasses are, cut my nose. So, there was some intent there as far as the way he hit me. And, afterwards he threatened to kick my ass and he even spit on my face. And, I still blew it off. I mean I've blown off the whole thing, but it was the fact that I was bleeding you know, and I had to go to the doctor, otherwise, I wouldn't have said nothing (inaudible) blow it off again. I mean, what I did was wrong, I suppose, you know. But, I guessed that it was more a matter of...nobody could have put up with as much as I did, you know. That's just flat out saying, you know, and that's what brought Mr. Winston over here."

There is no question as to Claimant's culpability for the charges assessed. As happens on occasion, the butt of the joke reacts in a manner that enrages the perpetrator who, in turn, reacts in a manner totally unexpected, in this instance, violently.

Claimant's recourse was to move away from his antagonist and report the incident to whoever is in charge, but taking action on his own can have consequences affecting his livelihood.


This Board finds the Carrier's handling of this matter violated no schedule rules nor agreement, nor was the discipline unduly harsh in view of what had been developed.


AWARD

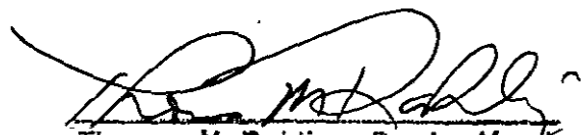
Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.


Robert L. Hicks, Chairman & Neutral Member


Rick B. Wehrli, Labor Member


Thomas M. Rohling, Carrier Member

Dated: March 26, 1999