

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 5905

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

)
) Case No. 36
)
) Award No. 31
)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

J. F. Ingham, Carrier Member

Hearing Date: February 15, 2006

STATEMENT OF CLAIM:

1. The discipline (five day suspension and thirty demerits) assessed G. E. Wood ard, Jr. for allegedly violating Rules 1.14 and 1.15 on July 30, 2003, at or near Griffith was without just and sufficient cause and based on an unproven charge.
2. As a consequence of the violation referred to in Part (1) above, G. E. Wood ard, Jr. shall now be compensated for all wage loss suffered and this matter shall be removed from his personal record.

FINDINGS:

Public Law Board No. 5905, upon the whole record and all the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On August 4, 2003, Carrier directed Claimant to report for an investigation on August 8, 2003, concerning his alleged violation of Maintenance of Way Safety Rules 1.14 and 1.15, on July 30, 2003. The hearing was held as scheduled. Claimant was been found guilty of the charge and assessed a five day suspension and thirty demerits.

The record reveals that on July 30, 2003, Claimant's foreman assigned two members of Claimant's gang to pick up supplies. Claimant was angry that he was not selected for that task and cursed. The foreman cursed as well. The foreman testified that shortly thereafter he heard Claimant tell another member of the gang that Claimant knew some people who would take care of the foreman. There was testimony that Claimant referenced people from Fifth Avenue, a particularly high crime area of Gary, Indiana. The foreman testified that he felt threatened. The


foreman reported the incident to his supervisor the following day.


There was conflicting testimony concerning the alleged incident. However, as an appellate body that does not observe the witnesses testify, we are in a comparatively poor position to assess witness credibility. Consequently, as a general rule, we defer to the resolution of conflicts in the testimony made on the property. We see no reason to depart from that approach in the instant case. Accordingly, we conclude that Carrier proved the charge by substantial evidence.

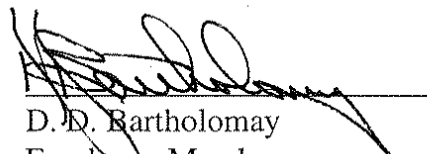
A reasonable person would interpret Claimant's statement as a threat of bodily harm to the foreman. Making such threats, even where they are communicated to a coworker instead of directly to the object of the threats, is a very serious offense. We cannot say that the penalty imposed was arbitrary, capricious or excessive.

AWARD

Claim denied.



Martin H. Malin, Chairman

J.F. Ingham
Carrier Member

D.D. Bartholomay
Employee Member

Dated at Chicago, Illinois, March 1, 2006.