

Public Law Board No. 6204

Parties to Dispute

Brotherhood of Maintenance of Way
Employees

vs

Burlington Northern Santa Fe

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Case 10/Award 10

Statement of Claim

1. That the dismissal of M. T. Powers for alleged violation of Carrier's Rules in connection with the personal injury sustained by S. M. Carr on June 13, 1994 was arbitrary, capricious, excessive and in violation of the Agreement.

2. That M. T. Powers be restored to service and made whole for any and all losses incurred beginning June 17, 1994 and that mention of the investigation and subsequent discipline be removed from his record.

Background

The Claimant was advised to attend an investigation in order to determine facts and place responsibility, if any, in connection with his actions which resulted in the personal injury of Shauna M. Carr on June 13, 1994 while assigned as a machine operator and sectionman on TP08. An investigation was held thereafter and the Claimant was advised that he had been found guilty as charged and he was dismissed from service of the Carrier. The Claimant's discharge was appealed by the Organization up to and including the highest Carrier officer designated to hear such. Absent settlement of this claim on property it was docketed before this Board for final adjudication.

Discussion and Findings

On June 13, 1994 the Claimant came up to fellow employee S. M. Carr and asked her, in the presence of other employees, if she knew what it sounded like when turtles have intercourse. When she responded in the negative the Claimant then proceeded to hit Ms. Carr on the top of her hard hat with his own, which he held both both hands, with such force that witnesses present stated that her knees buckled and that tears came to her eyes. Thereafter Ms. Carr advised her supervisor that she received neck injuries from the incident which caused her pain, headaches and injury. The Claimant was subsequently indicted in Barnes County Court, Barnes County, North Dakota for simple assault and was found guilty by that court of criminal assault against the person of fellow employee Carr on June 29, 1994.¹ On July 26, 1994 employee Carr agreed to a settlement with the Carrier because of injuries received at the hands of the Claimant on June 13, 1994. Provisions of that settlement were that she would progress no other claims and pursue no other remedies beyond what was in the settlement.

The Board has examined procedural arguments raised by the Organization in this claim and concludes that they are without foundation. Such arguments are dismissed.

There is sufficient evidence of record in this case to warrant conclusion that the discipline assessed by the Carrier was neither arbitrary nor capricious. The Carrier's determination in these matters will not, therefore, be disturbed.

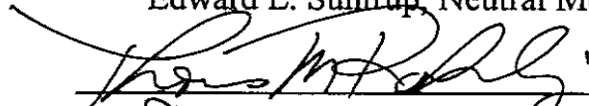
¹Employees' Exhibit A-7, Attachment 2.

Award

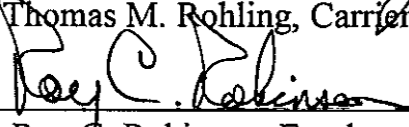
The claim is denied.



Edward L. Suntrup, Neutral Member



Thomas M. Rohling, Carrier Member



Roy C. Robinson, Employee Member

Date: December 15, 1999