

AWARD NO. 5

Case No. 5

Organization File No. Mounts Dismissal

Carrier File No. BMW 16-1

PUBLIC LAW BOARD NO. 7701

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) DIVISION - IBT RAIL CONFERENCE
DISPUTE)
) IOWA INTERSTATE RAILROAD, LTD

STATEMENT OF CLAIM:

1. The Carrier's discipline (dismissed from the service of the Iowa Interstate Railroad effective immediately) of Mr. M. Mounts, issued by letter dated April 5, 2016, in connection with his alleged violation of the Carrier's Rules 1.1, 1.1.1 and 1.6 and the Carrier's Policy 2.13 - Workplace Violence in that on and/or before March 11, 2016 he engaged in violence in the workplace by making threats of physical violence toward Mr. Schreiner was arbitrary, capricious and excessive (System File Mounts 1 IIS).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Mounts shall have all reference to the original preferred charges against him expunged from his personal record, be returned to service immediately and made whole for all loss suffered.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 17, 2014, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

At all times relevant to this dispute, Claimant was employed by the Carrier in the Maintenance of Way craft at Silvis, Illinois. The Carrier conducted an investigation on March 29, 2016, at which he and Boom Truck Operator Mark Schreiner were charged with engaging in violence in the workplace while on duty and on company property on and/or before March 11, 2016. Although Claimant was notified of the investigation, he chose not to attend, having told his representative that he feared for his safety. The investigation, therefore, was conducted in Claimant's absence. By letter dated April 5, 2016, Claimant was notified that he was dismissed from service.

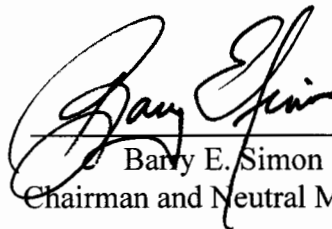
This investigation came about as the result of an incident occurring in the crew room at Silvis Yard at the beginning of the workday on Friday, March 11, 2016. Based upon written statements from both charged employees, as well as three other employees who were in the area at the time, the Board finds there to be no dispute that Claimant and Schreiner engaged in a verbal altercation that involved threats of physical violence. Such conduct is clearly unacceptable and is beyond what might be considered mere "shop talk." Because this had been Claimant's second offense involving violence in the workplace, the Board finds that his dismissal in this case was neither arbitrary nor unreasonable.

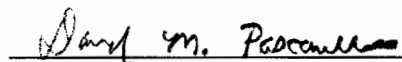
In reaching this conclusion, the Board has considered the procedural objections raised by the Organization. In particular, we fail to find the Carrier in violation of the Agreement in the manner in which it notified Claimant's representative of the discipline imposed. We note that the discipline notice was sent to Claimant by Certified Mail, but was sent to his representative by email. The Agreement requires only that written notice be given to the employee, "with copy to the Organization's local representative." As the Agreement does not specify the mode of delivery of the


discipline notice to either the employee or the representative, we cannot agree that the notice to either must be by Certified Mail. For the Board to impose such a requirement would necessitate our amending the Agreement, which is beyond our authority.

The Organization also argues that the Carrier failed to provide a timely copy of the investigation transcript. Unlike the provision of the Agreement imposing a time limit upon the issuance of the discipline notice, Rule 19.E. of the Agreement does not mention any time limit for furnishing a copy of the transcript. Although the Carrier avers the transcript was sent with the email notifying the representative of the disciplinary action, and we are unable to conclude that it was not, the record reflects that a paper copy of the transcript was sent to the Vice General Chairman by letter dated May 3, 2016. Despite the Organization's argument that a delay in the delivery of the transcript inhibited its ability to file an appeal of the discipline, it has not shown how it might have been harmed in this case.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


David Pascarella
Employee Member


Chad Lambi
Carrier Member

Dated: 2/13/18
Arlington Heights, Illinois