

AWARD NO. 6

Case No. 6

Organization File No. Mounts Dismissal

Carrier File No. BMW 16-2

PUBLIC LAW BOARD NO. 7701

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO) DIVISION - IBT RAIL CONFERENCE
DISPUTE)
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 27, 2016, in connection with his alleged violation of his April 2, 2013 return-to-work agreement in that on and/or before March 11, 2016 he engaged in violence in the workplace while on duty and on company property was arbitrary, capricious and excessive (System File Mounts 2 IIS).
2. As a consequence of the violation referred to in Part 1 above, Claimant M. Mounts shall be reinstated to service with seniority unimpaired and compensated for all lost wages, including but not limited to all straight time hours, overtime hours, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health and welfare and dental insurance and any and all other benefits to which entitled but lost as a result of the Carrier's arbitrary, capricious and excessive discipline in dismissing him from service.

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.

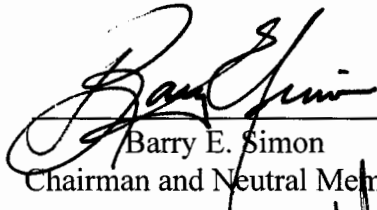
This case arises from the circumstances in Award No. 5 of this Board. After review of the transcript of the investigation that resulted in Claimant's dismissal in that case, the Carrier contends it determined that Claimant might have violated an April 2, 2013 agreement under which he returned to work following an earlier dismissal for engaging in violence in the workplace. It then, on April 5, 2016, directed him to attend a second investigation at which he was charged with violating his Return-to-Work Agreement when on and/or before March 11, 2016 he engaged in violence in the workplace, while on duty and on Company property. Although Claimant was notified of the investigation, he elected not to attend and it was conducted on April 14, 2016 in his absence. Following the investigation, Claimant was again dismissed from service.

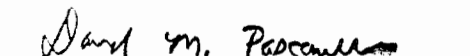
The Organization has objected to the timeliness of the investigation, asserting that the investigation was based upon the same facts known by the Carrier when it originally issued a notice of charge for the March 29, 2016 investigation. The Board has reviewed the records of both investigations and finds that, while the Carrier was aware of the facts surrounding the incident in the crew room on March 11, 2016, there was new evidence of Claimant making threatening statements regarding Mark Schreiner on other occasions. It was the Carrier's first knowledge of these allegations that triggered the time limit for conducting the second investigation. We find, therefore, that the Carrier had complied with the Agreement's time limits in charging, investigating and disciplining Claimant.

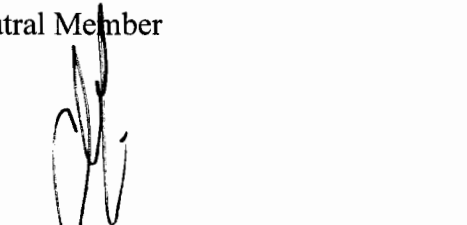
Based upon the record before us, we find that the Carrier had substantial evidence to support its charge against Claimant. Testimony was given regarding Claimant's conduct and, inasmuch as Claimant chose not to attend the investigation, the testimony was unrefuted. The Carrier also

established that Claimant had agreed to certain conditions when the Carrier reinstated him following his 2013 dismissal for engaging in violence in the workplace. One of those conditions was that Claimant "must not violate the Carrier's Rules and/or Policies pertaining to violence in the work place for the remainder of his employment with the Carrier." We concur with the Carrier's conclusion that he had violated this condition of his reinstatement. The Return-to-Work Agreement put Claimant on notice that his failure to comply with these conditions would result in his being returned to a dismissed status. We find no basis, therefore, for modifying the discipline imposed 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