

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

AWARD NO. 141, (Case No. 162)

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION - IBT RAIL CONFERENCE**

vs

**UNION PACIFIC RAILROAD COMPANY (Former Missouri Pacific
Railroad Company)**

William R. Miller, Chairman & Neutral Member

T. W. Kreke, Employee Member

B. W. Hanquist, Carrier Member

Hearing Date: August 17, 2010

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The discipline (removed and withheld from service beginning on March 4, 2009, and subsequent Level 5 - dismissal by letter dated April 9, 2009) imposed upon Mr. M. Richardson for alleged violation of Rule 1.6 of the General Code of Operating Rules and Workplace Violence and Related Policy Directives in connection with allegedly making inappropriate comments to fellow employees and allegedly engaging in workplace violence, acts of hostility and threatening behavior at Angleton, Texas, as per outcome of formal investigation held on March 31, 2009, was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File UP-504-JF-09/1515491D).
2. As a consequence of the violation referred to in Part 1 above, Mr. M. Richardson, shall now have the aforesaid discipline removed from his record and he shall be reinstated to service with all rights unimpaired and compensated for all time lost beginning on March 4, 2009 and including on a continuing basis until this matter is settled, all lost time to be credited towards Railroad Retirement, vacation, hospitalization and all expenses to be paid to include any meals and mileage at the rate of \$.55 a mile acquired by him attending the formal investigation on March 31, 2009."

FINDINGS:

Public Law Board No. 6402, 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 March 13, 2009, Carrier notified Claimant to appear for a formal Investigation on March 23rd which was postponed until on March 31, 2009, concerning in pertinent part the following charge:

"...to develop the facts and place your responsibility, if any, in connection with your alleged conduct unbecoming an employee by making inappropriate comments to fellow employees, allegedly engaging in workplace violence, acts of hostility and threatening behavior, at Angleton, Texas. First knowledge by a Company officer on March 4, 2009.

This is a possible violation of Rule 1.6 of the Union Pacific General Code of Operating Rules and Workplace Violence and Related Policy Directives...."

On April 9, 2009, Claimant was notified that he had been found guilty as charged and his record was assessed with a Level 5 discipline and dismissal from the Carrier's service.

It is the Organization's position that the charges were imprecise and there was no basis for the charging of the Claimant. It argued that the Claimant never threatened Foreman Carter and was simply joking with him, therefore, it concluded by requesting that the dismissal be set aside and the Claim be sustained as presented.

It is the Carrier's position that violence in the workplace will not be tolerated and in this instance the record substantiates that the Claimant made verbal threats towards Foreman Carter including admission of such by Claimant. Additionally, it argued that Claimant received a fair and impartial Hearing. It closed by stating that the discipline was appropriate and asked that it not be disturbed and the Claim remain denied.

The Board thoroughly reviewed the record and we found no procedural errors which require setting aside the discipline as the Claimant was afforded his "due process" Agreement rights and it is clear that the Claimant and his representative understood the charges which is evident by the Organization's obvious preparedness and worthy defense of the Claimant.

Turning to the merits, a review of the Transcript on pages 80 and 81 reveals that Foreman Carter testified that on January 22, 2009, he found Claimant sleeping while on duty. When Carter informed Claimant that he could be removed from service for his actions, Claimant threatened bodily harm on Foreman Carter and his family including a threat to burn down his home. On pages 83 and 85 of the Transcript Carter further testified that he was not certain about

the Claimant's intentions. Later in the Hearing he went on to explain that he was concerned for his and his family's safety.

It was the Claimant's contention that he was simply joking with Mr. Carter and was not actually threatening him. A few examples of Claimant's jocular testimony are found in the Transcript as follows:

Page 124 - **"I said when you take me out of service, I said, man, I'm going to hurt you."**

Page 126 - **"All I said to him was, um, oh, man, I'm going to kick your butt, or whatever, and that was it, I mean."**

Page 140 - **"I said, all right, Carter, I'm going to kick your butt if I get out of service..."**

On page 148 he was questioned as follows:

"Q: Okay. Do you remember ever saying anything to Mr. Carter that you would "F" him up as well as his family and burn his house down? You never said anything like that?

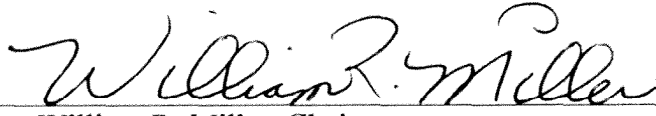
A: I never said I'd burn his house down. *(Underlining Board's emphasis)*

Claimant's alleged humor was less than funny especially when he admitted that he told Foreman Carter he would hurt him and his family. It is clear that the Carrier met its burden of proof with substantial evidence and corroborating testimony that Claimant threatened physical harm to his co-worker D. Carter and his family.

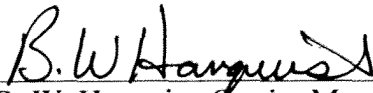
The only issue remaining is whether the discipline was appropriate. At the time of the incident the Claimant was a short term employee with less than three years of service who threatened bodily harm to his foreman and the foreman's family. The Carrier has a duty and obligation to provide a safe working environment for its employees free of threatening behavior. In this instance there was no excuse for Claimant's actions and we find no reason for mitigating the discipline as it was not arbitrary, excessive or capricious and was in accordance with the Carrier's UPGRADE Policy. The discipline will not be set aside.

AWARD

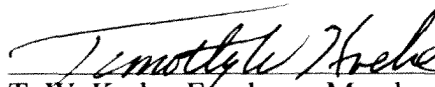
Claim denied.



William R. Miller, Chairman



B. W. Hanquist, Carrier Member



T. W. Kreke, Employee Member

Award Date: October 4, 2010