

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 6402

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

UNION PACIFIC RAILROAD COMPANY

)

) Case No. 41

)

) Award No. 28

)

Martin H. Malin, Chairman & Neutral Member

D. D. Bartholomay, Employee Member

D. A. Ring, Carrier Member

Hearing Date: March 22, 2004

STATEMENT OF CLAIM:

1. The dismissal of Truck Operator Raymond Walters for his alleged threat to do bodily harm to an employee on March 18, 2003 at the Ford T. Hopkins Compound in Ft. Worth, Texas, was without just and sufficient cause and based on an unproven charge (System File T03-21/1363358).
2. Truck Driver Raymond Walters shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered commencing March 19, 2003.

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 21, 2003, Carrier notified Claimant to appear for an investigation on March 31, 2003, concerning the charge that while working as a Truck Driver on March 18, 2003, at the Fort T. Hopkins Compound in Ft. Worth, Texas, Claimant intended to do bodily harm to a fellow employee. The hearing was held as scheduled. On April 14, 2003, Claimant was notified that he had been found guilty of the charge. Claimant was dismissed from service.

The Organization has advanced numerous procedural arguments. We have reviewed all of those arguments and the transcript and find that Claimant was afforded a fair and impartial hearing and that none of the procedural arguments provides a basis for setting aside the discipline.

The Track Foreman testified that on the date in question, he was on the telephone speaking to an NPS Specialist to add a new employee to his gang for payroll. Claimant overheard the conversation and, upon its conclusion, told the Track Foreman that he knew the new employee, that he had been looking for the new employee because of issues involving the new employee and the new employee's children for whom Claimant had been caring for ten years, and that he was going to shoot the new employee. Claimant then left, returned twenty minutes later and said that the new employee was not the person he thought he was.

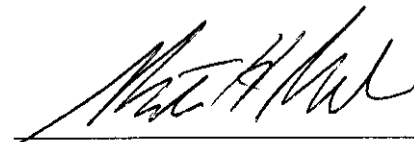
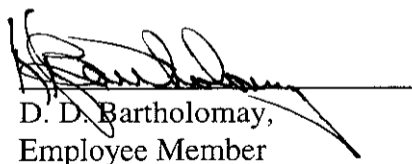
Claimant testified and related a very different version of events. According to Claimant, he merely remarked to the Track Supervisor that the new employee had the same name as Claimant's wife's ex-husband and that the ex-husband was a jerk and Claimant did not care for him. Claimant denied stating that he was going to shoot anyone.

The hearing officer analyzed the demeanor of the two witnesses and their testimony and concluded that the Track Supervisor was the more credible witness. As an appellate body, we do not observe the witnesses and are in a poor position to evaluate their credibility. Consequently, we defer to the credibility determinations made on the property. We see no reason to deny the credibility determinations made in the instant case the deference to which such findings are generally entitled. Accordingly, we conclude that Carrier proved the charge by substantial evidence.

The offense is an extremely serious one and Claimant had only eleven months of service at the time of the incident. The penalty of dismissal is in keeping with Carrier's UPGRADE and we are unable to say that it was arbitrary, capricious or excessive.

AWARD

Claim denied.


Martin H. Malin, Chairman
D. A. Ring,
Carrier Member
D. D. Bartholomay,
Employee Member

Dated at Chicago, Illinois, July 23, 2004