

PUBLIC LAW BOARD NO. 6490

AWARD NO. 1

CASE NO. 1

**PARTIES TO
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees

vs.

Duluth Missabe and Iron Range Railway Company

STATEMENT OF THE CLAIM:

Claim of the System Committee of the Brotherhood that:

- 1. The dismissal of Track Foreman Brett A. Laine for his alleged violation of Rule 1.6 and 1.9 of the Maintenance of Way Operating Rules because of his incarceration on October 2, 2001 was without just and sufficient cause and based on unproven charges.**
- 2. Track Foreman Brett A. Laine shall now be reinstated to service with seniority and all other rights unimpaired and compensated for all wage loss suffered.**

FINDINGS OF THE BOARD:

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

Claimant was discharged as a result of circumstances that caused him to be charged with alternative counts of second degree murder: First, for intentionally causing the death of his girlfriend and, second, for unintentionally causing her death while committing a felony assault upon her. At the time of the Board's hearing, Claimant was free on bond awaiting trial. His employment history reflected some twenty-three years in Carrier's service.

The record of investigation was developed without controversy. It contains three Duluth-area newspaper articles describing certain details about the death scene at Claimant's residence. One of the articles publicized Claimant's employment as a track foreman with the Carrier. The Carrier is headquartered and has major operations in the Duluth, Minnesota area.

The record also contains a copy of the criminal complaint against Claimant. In addition, the testimony includes opinion evidence that the publicity created a loss of Carrier's goodwill and subjected it to criticism. A negative phone call from an unidentified newspaper reader was also described in the record.

According to the articles, Claimant said his girlfriend had fallen down the upper seven stairs in his split-level home at approximately 1:00 a.m. Although she was unconscious, Claimant did not immediately call for emergency medical assistance for her. Instead, he carried her down the remaining steps, removed her clothing, and put her into bed. When Claimant noticed that she was having difficulty breathing, he called his mother, who lived nearby, to assist him. It was not until 3:20 a.m., after his mother arrived, that Claimant called 911. Emergency responders found the girlfriend dead upon their arrival.

The articles also reported the medical examiner's determination that the girlfriend suffered blunt force trauma to her head that caused extensive intra-cranial bleeding and a subdural hematoma that killed her. The reported autopsy findings included two long scratches, cuts or abrasions on the decedent's head and forehead, abrasions on her nose, a bruise under her chin, bruises on her right arm, legs and back. Her left ear was swollen, and the area around the ear was badly bruised.

The newspaper account also noted the criminal complaint allegations that Claimant had abused the decedent in the past. It also reported Claimant's 1995 conviction for domestic assault against a former wife.

The criminal complaint echoed much of the newspaper accounts but also contained additional factual assertions. According to the complaint, Claimant said the decedent did not regain full consciousness after her fall. He also said that her clothes and his clothes were covered in blood as was the landing area. Claimant said he put both her clothes and his clothes in the washing machine and he cleaned the landing area.

Claimant said he never took the decedent back upstairs. According to the complaint, luminol photography was used on the upper level of the residence. Investigators discovered the presence of what is believed to be blood around the area of a love seat in the living room. The complaint noted "... a number of spots of what appears to be blood on the carpet."

The complaint also stated that Claimant's mother was interviewed. She told investigators that she saw the decedent earlier in the weekend and that she did not have any bruises on her.

Although he was present and testified briefly at the Carrier's investigation hearing, Claimant did not refute any of the specific factual assertions contained in the newspaper articles or the criminal complaint.

Claimant was charged with conduct unbecoming an employee in violation of Carrier Rules 1.6 and 1.9. They read as follows:

1.6 Conduct

Employees will not be retained in the service that are careless of the safety of

themselves or others, disloyal, insubordinate, dishonest, immoral, discourteous, quarrelsome or otherwise vicious, or whose conduct subjects the railroad to criticism and loss of good will.

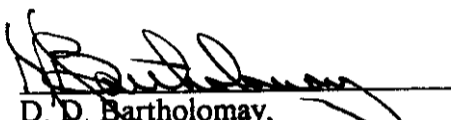
- 1.9 Respect of Railroad Company
Employees must behave in such a way that the railroad will not be criticized for their actions.

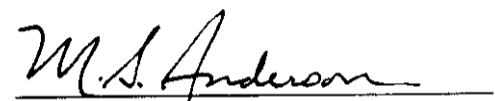
In disputes of this kind, it is well settled that our role is appellate in nature. We do not sit to weigh the evidence and resolve the issues of fact that arise from the evidence. Rather, our role is limited to reviewing the evidentiary record developed by the parties during their handling of the dispute on the property to determine whether the Carrier's action is supported by substantial evidence in that record. If it is, we may not substitute our judgment for that of the Carrier. See Third Division Awards 26920, 32547 and 32721 as well as Award No. 763 of Special Board of Adjustment 910.

Given the state of the record herein, we find that the Carrier's determination is supported by substantial evidence. This finding is not diminished by the number of prior decisions cited by the Organization in opposition. The situations depicted in those decisions did not approach the kind of circumstances present on this record. Moreover, none of them involved the kind of wide-spread media publicity as here.

AWARD: Claim denied.


Gerald E. Wallin, Chairman
and Neutral Member


D. D. Bartholomay,
Organization Member


M. S. Anderson, Jr.
Carrier Member

Dated: February 13, 2003