

BEFORE PUBLIC LAW BOARD NO. 6621

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

And

UNION PACIFIC RAILROAD COMPANY

Case No. 40

Statement of Claim: "Claim of the System Committee of the Brotherhood that:

1. The dismissal of Truck Driver James R. Trozzo for his alleged violation of Union Pacific Rule 1.7 on Friday, August 22, 2003 at Indio Maintenance of Way office was without just and sufficient cause and excessive and undue punishment.
2. Truck Driver James D. Trozzo shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered."

Background:

Claimant James R. Trozzo, a truck driver with about six months' seniority, was working with a welding gang on Friday, August 22, 2003, and returned to the Indio Maintenance of Way office at quitting time. As Claimant was joking around with members of the welding gang, he went up to welder Robert Love, who was sitting in a chair with one leg on a desk and the other leg crossed over, and placed him in a cradle hold – by hooking his left arm around Love's neck, placing his right hand under Love's legs, and causing Love to bend in half, with his forehead almost touching his knees. Meanwhile, Love was shouting: "Hey, my back, my back, my back." (Tr. at 43). After about ten seconds, Claimant released Love, asking him why he was not still wearing his back brace. Love responded that if his back continued to hurt over the weekend, Claimant was going to hear about it on Monday. Claimant, in a joking way, then told Love to stop his whining.

Claimant and Love had been friends, and frequently kidded with each other. As former

wrestlers, they sometimes would talk about what holds they would use on the other.

The following Monday, August 25, 2003,¹ Love reported the incident to supervisor R. A. Clark because his back was hurting him. Love was then taken to a hospital and diagnosed with a new back injury. By letter dated August 29, the Carrier notified Claimant of an investigation and hearing on September 16 on charges that he allegedly put one arm around R. Love's neck, and his other arm under Love's leg and forced his head toward his knees, in violation of Rule 1.7, Altercation, which provides:

1.7 Altercations - Employees must not enter into altercations with each other, play practical jokes, or wrestle while on duty or on railroad property.

(Car. Ex. E-1).

Following the hearing, the Carrier issued a letter dated October 15, advising Claimant that he was dismissed for violating Rule 1.7, Altercation. In response, the Organization submitted a claim on October 22, challenging the dismissal. The parties were unable to amicably resolve the dispute on the property, and submitted it to the Board for final and binding resolution.

Carrier's Position:

The Carrier asserts that there was substantial evidence to support its determination that Claimant violated Rule 1.7. The Carrier emphasizes that Claimant's aggressive grabbing of co-employee Love and placing him in a cradle hold was unprovoked, resulting in a back injury to Love. In response to the Organization's argument that Claimant merely engaged in "horseplay," the Carrier responds that his intent was irrelevant. Rather, the Carrier urges that Claimant placed Love, an unwilling participant, in a cradle hold, injuring Love's back in blatant violation of Rule

¹ Unless otherwise stated, all dates will be in 2003.

1.7. Furthermore, the Carrier claims that dismissal was not arbitrary, capricious or an abuse of Carrier discretion, particularly because Claimant, who had served with the Carrier for only about six months, had just studied the rules. Therefore, he should have fully understood that wrestling and physical horseplay are prohibited.

Organization's Position:

The Organization submits that there was no substantial evidence that Claimant violated Rule 1.7 because it is undisputed that Claimant had no malice and Love did not report any injury until three days after the incident. Furthermore, the Organization claims that, even if Claimant's actions were deemed to be inappropriate in the workplace, the ultimate penalty of dismissal was excessive, arbitrary and capricious because Claimant had no intent to injure Love.

Findings:

The Carrier presented substantial evidence that on Friday, August 22 Claimant, unprovoked, approached co-employee R. Love as he was sitting in a chair with his legs on a table in a Maintenance of Way office, and grabbed him in a cradle hold, bending Love's neck towards his knees. Meanwhile, Love said: "Hey, my back, my back, my back." (Tr. at 43). Although it is undisputed that Claimant meant no harm, Love suffered a back injury which he reported to the Carrier the following Monday, his next day of scheduled work.

Rule 1.7 unambiguously prohibits employees from wrestling while on Carrier property. Claimant did exactly that. Moreover, he wrestled with the wrong person (R. Love), who objected to Claimant's cradle hold and injured his back in the process.

The Organization argues that no violation of Rule 1.7 occurred because Claimant had no

intent to harm Love. Rule 1.7, however, does not require an intent to harm. For example, it prohibits, in addition to wrestling on Carrier property, practical jokes, which normally are not intended to hurt anyone.

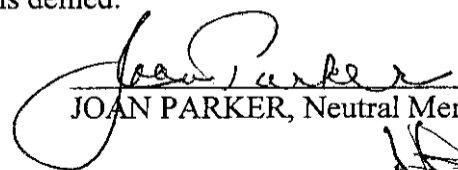
No more persuasive is the Organization's contention that Claimant did not violate Rule 1.7 because Love did not report his back injury until three days after the incident, suggesting that Love may have independently injured his back over the weekend. Rule 1.7 does not require that an injury occur. It is the risk of harm that Rule 1.7 is designed to prevent. Moreover, in the instant case, there was substantial evidence that Love, who reported the injury on his first scheduled work day following the incident, did injure his back as a result of Claimant's cradle hold on him.

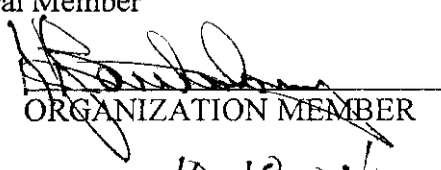
The Carrier has a legitimate interest in seeking to deter and prevent horseplay, however well intended, such as the wrestling hold Claimant applied to Love on August 22. Grabbing fellow employees in wrestling holds present a significant safety risk. Contrary to the Organization's protests, it was not arbitrary, capricious or an abuse of discretion for the Carrier to dismiss Claimant, who barely had progressed through his probationary period, for his serious violation of Rule 1.7.

Award:

The claim is denied.


CARRIER MEMBER
DATED: 10-18-04


JOAN PARKER, Neutral Member


ORGANIZATION MEMBER
DATED: 10-18-04