

PUBLIC LAW BOARD NO. 912

PARTIES) NORFOLK AND WESTERN RAILWAY COMPANY  
TO )  
DISPUTE) UNITED TRANSPORTATION UNION

STATEMENT OF CLAIM: Claim of Detroit Local Chairman W. F. Pochlik, for reinstatement to service with pay for all time lost, his seniority, vacation, and all other rights restored and the record corrected, due to his unjust dismissal on June 1, 1981.

FINDINGS: This Public Law Board No. 912 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was charged with being insubordinate to superintendent M. P. Anglen, being insubordinate toward assistant trainmaster W. M. Banta, unbecoming conduct, making false statements and using unbecoming language in conversation with Ms. A. L. Coleman Norfolk and Western patrolwoman, and unbecoming conduct between 9:55 a.m. and 10:12 a.m. on June 4, 1981 when he appeared at the Norfolk and Western Building in a T-shirt depicting Raggedy Ann and Andy engaged in sexual intercourse.

Assistant superintendent M. E. Kloth was conducting an investigation on June 2, 1981, and the claimant was appearing as local chairman, representing the charged employee. At approximately 10:55 a.m. on that date the hearing officer recessed the formal investigation and during the recess noticed that the claimant was in the hallway playing back a recording device with other crew members listening. He recognized the recording as part of the investigation which was being conducted.

At 11:05 a.m. the recess ended, and as the claimant was walking into the hearing room, Mr. Kloth advised him that the use of his personal tape recorder would not be allowed. The claimant was requested to remove the recorder from the room and was instructed to turn it off and remove it, but the claimant did not do so. Thereupon the hearing officer again recessed the investigation and went to superintendent M. P. Anglen's office and advised him of what had occurred.

At 11:25 a.m. the claimant returned, and superintendent Anglen met the claimant in the doorway and told him that he would not be allowed to tape record the proceedings. At 11:29 a.m. the hearing was reconvened, and the hearing officer asked the claimant if he was now ready to proceed without the tape recorder, and when advised that the claimant would not do so, the hearing officer requested security officer Miller to remove the claimant and his tape recorder from the

property and recessed the investigation. Captain Miller requested the claimant to leave the property and was told by the claimant he would have to throw him off the property.

Superintendent Anglen gave the claimant a direct order to leave the property, and the claimant refused. The Detroit Police were called, and shortly thereafter the claimant left the property.

The transcript herein contains 477 pages of testimony. The Carrier and the Organization have both filed extensive briefs in support of their positions.

The conduct of the claimant herein cannot be condoned nor can it be justified. The claimant is obviously a poor representative of his employees and should not be allowed to act in the capacity of local chairman. Wearing the T-shirt that he was wearing was crude and offensive and certainly not conducive to good relation between the Carrier and the Organization.

Also, as local chairman the claimant should have known how to progress a grievance regarding the use of a tape recorder in an investigation. Certainly the course of conduct which the claimant used herein was not the proper method to air that grievance.

Nevertheless the fact remains that the claimant was present and acting in the capacity of local chairman in behalf of the Organization. While acting in that capacity the claimant is not subject to discipline by the Carrier. The only recourse which the Carrier had when the claimant acted in the manner herein is to have him removed from the property.

The evidence establishes that the claimant is guilty of all five of the charges preferred by the trainmaster. However, the claimant is just not subject to discipline when he is appearing in the capacity of local chairman. He is not only the local chairman when he is in the hearing room, but he also remains the local chairman when he steps outside the hearing room and is conferring with employees, who are witnesses.

This is not to say that a local chairman may come on the property and contend that because he is local chairman he is not subject to discipline and control by the Carrier. Such does not follow. However, the claimant herein was appearing at an investigation as a representative of an employee.

This Board does not condone the conduct of the claimant, and if any of these occurrences had occurred when he was not acting in the capacity of local chairman, the Board would deny the claim. However, under these circumstances the Carrier is directed to reinstate the claimant with seniority and all other rights unimpaired and pay for time lost.

However, all monies that the claimant has collected from unemployment or any other means, except outside earnings, will be deducted from the amount paid to the claimant.

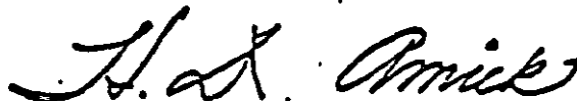
If the Board had any authority to do so, the claimant would be reinstated without pay for time lost, but the Board is bound by the agreement between the parties and legal justice.

AWARD: Claim sustained as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

  
Preston J. Moore, Chairman

  
G. T. Dufosse, Organization Member

  
H. D. Amick, Carrier Member

  
2 dissent

St. Louis, Missouri  
June 30, 1982

Reinstated with pay