

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1040
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
SOO LINE RAILROAD COMPANY

Case No. 28

STATEMENT OF CLAIM:

Appeal of Claimant Timothy S. Morrow's sixty actual working day suspension from the Carrier's service.

FINDINGS:

On September 1, 1995, the Carrier notified Claimant Timothy S. Morrow that a formal investigation was being scheduled to determine the Claimant's responsibility, if any, in connection with his alleged assault on Section Foreman Michael W. Patton on August 22, 1995.

As the Claimant was on medical leave, the hearing was held in abeyance pending the return of the Claimant to active service. However, by agreement of the parties, the hearing took place on October 19, 1995, before the Claimant officially returned from medical leave. On November 1, 1995, the Carrier notified the Claimant that he had been found guilty of all charges and was being assessed a sixty actual working day suspension upon his return to active service.

On November 4, 1995, the Claimant advised the Carrier of his intention to appeal the discipline under the provisions of the Agreement of June 1, 1990.

The parties being unable to resolve the issues, this matter comes before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of assaulting his Section Foreman when he pulled a knife on him and stuck it in his back. The Claimant

admits to having pulled the knife and put it against the back of the Section Foreman, but seems to indicate that it was being done in fun and that there was no harm intended. However, although the Section Foreman does not state that he was afraid of the situation, he was obviously concerned about it. He contacted his supervisor and reported it, and it had an impact on the workplace that day and on future days.

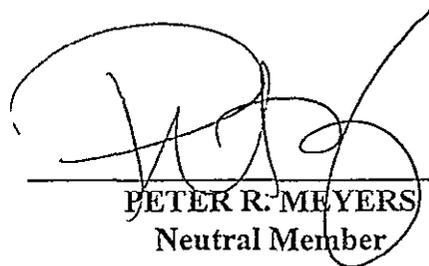
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.

The type of behavior at issue in this case most often leads to the discharge of the offender. The Claimant in this case only received a sixty-day suspension. Obviously, the Carrier has already exercised leniency in this matter. Therefore, this Board does not find that the discipline imposed was unreasonable, arbitrary, or capricious and there is no reason to reduce it.

For all of the above reasons, the claim must be denied.

AWARD:

Claim denied.



PETER R. MEYERS
Neutral Member

Dated: January 29, 1996