

SPECIAL BOARD OF ADJUSTMENT #280

Award No. 149
Case No. 233

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE St. Louis Southwestern Railway Company

STATEMENT
OF CLAIM

- "1. Carrier violated the effective Agreement when Laborer Larry Crow was unjustly dismissed on February 28, 1979.
2. Claimant Larry Crow shall be reinstated to his former position with pay for all time lost, vacation, seniority and all other rights unimpaired."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Claimant, a laborer, had been employed by Carrier for approximately nine months. He was dismissed by Carrier by letter dated February 28, 1979 for engaging in an altercation and fight with another employee on a Company bus. Claimant requested a hearing in accordance with the Agreement which was accorded him on March 19, 1979. Following the hearing, Carrier reaffirmed its earlier discipline.

Petitioner's position in this dispute is essentially that Carrier failed to sustain its burden of proof. Petitioner argues that Claimant was not the aggressor in the fight but was merely trying to defend himself. Further, Petitioner argues that Carrier prejudged the matter and thus, flawed the proceeding.

Carrier recognized at least the partial culpability of the other employee engaged in the altercation. That employee was disciplined although not as severely as Claimant. Carrier insists that the evidence indicates that Claimant herein was the aggressor

having engaged in verbal abuse and having indeed started the physical altercation which was involved in this matter. Carrier insists that the record indicates without question that Claimant violated the Company rules by engaging in the altercation and thus, he was guilty of the charge and properly dismissed.

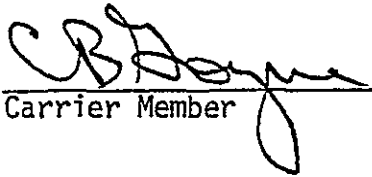
The record does not indicate in any fashion that this matter was prejudged by Carrier. The record further supports Carrier's position that Claimant was guilty of the charges and thus, was subject to discipline. With respect to the measure of discipline, Carrier had the right to impose the discipline of dismissal on a short term employee who engaged in an altercation and physical fight while on Company property during working hours. Thus, there is no basis for disturbing Carrier's ultimate decision and penalty. The claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman



Carrier Member



Employee Member

May 20, 1980
Houston, Texas