

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY

Case No. 162 **Award 146**

STATEMENT OF CLAIM: Claim of the System Committee of the
Brotherhood that:

1. The dismissal of F. D. Clapp for his alleged responsibility in connection with an altercation with his foreman while off duty and off Carrier's property was without just and sufficient cause, unsupported and discriminatory (Organization File 3KB-4440 D; Carrier File 81-89-67).
2. Claimant F. D. Clapp shall now be reinstated with seniority and all other rights unimpaired, compensated for all time lost and be made whole for all losses suffered by his unjust dismissal.

FINDINGS:

Claimant F. D. Clapp was employed by the Carrier as a machine operator.

On November 23, 1988, the Carrier notified the Claimant to appear for a formal investigation into the following charge:

Your responsibility for entering into a physical altercation which resulted in personal injury to Foreman D. Contreras at approximately 2:30 a.m., November 23, 1988, while off duty and staying in lodging at the expense of the Company.

After one postponement, the hearing took place on December 16, 1988. On December 23, 1988, the Carrier dismissed the Claimant from service. On March 28, 1989, the Organization appealed the Carrier's decision, claiming that the incident

occurred off Carrier property; that there is no rule covering this incident; that the Carrier prejudged the case; and that the Claimant did not receive a fair and impartial hearing. Thereafter, the Carrier reaffirmed its decision on the basis that the Claimant was responsible for the physical assault and injury to Mr. Contreras. The parties being unable to resolve the issues, this matter came 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 engaging in a physical altercation with his supervisor which caused severe physical injury to the foreman.

The record reveals that the Claimant's foreman received a broken nose as a result of being struck by the Claimant.

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.

In this case, the Claimant was found guilty of an extremely serious offense. He was drinking alcohol and then he went to the foreman's motel room, entered uninvited, and broke the foreman's nose.

Given the serious nature of the offense of which the Claimant was found guilty, this Board cannot find that the action


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taken by the Carrier was unreasonable, arbitrary, or capricious.

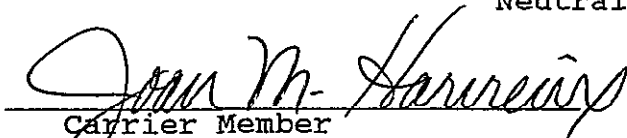
Therefore, the claim must be denied.

AWARD:

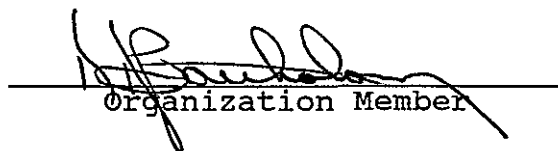
Claim denied.



PETER R. MEYERS
Neutral Member



Carrier Member



Organization Member

Date: _____

7/25/91