

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 61
Docket No. 70

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Chicago and North Western Transportation Company

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

- (1) The thirty (30) day deferred suspension assessed Trackman R.L. Upah for alleged failure to properly conduct himself when he entered into an altercation was without just and sufficient cause and on the basis of an unproven charge. (Organization File 4D-4726; Carrier File 81-85-18-D)
- (2) Trackman R.L. Upah shall have his record cleared of this incident and be compensated for all wage loss suffered."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Claimant was employed as a trackman at the Carrier's Tama Welding Plant. On July 14, 1984, Claimant and another employee became involved in an altercation; this arose as a result of some graffiti that was directed at the other employee and his wife. Claimant was notified to report for investigation, to be conducted July 23, 1984, of the charge:

"Your responsibility for your failure to properly conduct yourself on Company property when you entered into an altercation at Tama, Iowa on July 14, 1984."

The investigation was conducted as scheduled on July 23, 1984. A copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

The Organization contends that the Carrier has failed to meet its burden of proof in this matter. The Organization claims that the Claimant was an innocent bystander to the dispute that led to the altercation with the other employee; the Claimant was physically beaten without provocation.


The Carrier contends that the charges were proven. The Carrier asserts that the record establishes that the Claimant provoked the altercation between himself and the other employee; it also is clear that the other employee hit the Claimant only


after the Claimant made some movement that was construed as threatening. The assessed discipline was therefore neither arbitrary nor unreasonable.

This Board has reviewed all of the testimony and evidence in this case, and it finds that an altercation did take place between the Claimant and another employee, Mr. Biggs. It is also evident that Mr. Biggs swung the first punch at the Claimant in the fight. However, the testimony is clear that the Claimant clearly provoked Mr. Biggs into swinging the first punch, and the Claimant did make some motion which Mr. Biggs interpreted as a threatening action. This threatening physical motion, in addition to the other provoking activities taken by the Claimant against Assistant Foreman Biggs, makes it clear that the Carrier had just cause to impose the discipline against the Claimant. Even if Biggs was the aggressor, the Claimant should not have struck the second blow. The Claimant's responsibility in such a situation would be to walk away and file a claim against his foreman. There is no evidence in the record that the Claimant acted in self-defense, and therefore the Carrier has met its burden in showing that the Claimant engaged in an altercation for which he was responsible and thereby subjected himself to discipline.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Labor Member

Date: April 9, 1986