

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 9
Docket No. 9

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 dismissal of Trackman J. W. Coleman for allegedly falsifying his employment application and allegedly threatening the DeKalb roadmaster was without just and sufficient cause and in violation of the Agreement. (Organization File 3D-3492; Carrier File 81-83-63-D).
- (2) Claimant J. W. Coleman shall be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

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

Prior to his dismissal, claimant was employed as a trackman, on Carrier's Illinois Division. On October 26, 1982, Carrier's Roadmaster, James A. Tacke, was supervising the work of a maintenance crew at DeKalb, Illinois. Claimant, who was not working that day, approached the maintenance crew and talked to the employees. The Carrier contends that claimant picked up a stick, walked over to the Roadmaster and told him (the Roadmaster) that he was going to kill him, shaking the stick at him while he did so.

On November 1, 1982, written notice was directed to claimant to report for investigation at 3:00 P.M., Wednesday, November 3, 1982, on the charge:

"Your responsibility for falsification of your application for employment dated September 16, 1977, and for threatening bodily harm to the DeKalb Roadmaster on October 26, 1982."

The Organization contends that the claimant was handed the notice of charge on November 2, 1982.

Rule 19(a) of the Agreement provides:

"Rule 19 - Discipline

(a) Any employee who has been in service in excess of sixty (60) calendar days will not be disciplined nor dismissed without a fair and impartial hearing. He may, however, be held out of service pending such hearing. At the hearing, the employee may be assisted by an employee of his choice or a duly accredited representative or representatives of the Brotherhood. The hearing will be held within ten (10) calendar days of the alleged offense or within ten (10) calendar days of the date information concerning the alleged offense has reached the Assistant Division Manager-Engineering. Decision will be rendered within ten (10) calendar days after completion of hearing. Prior to the hearing the employee will be notified in writing of the precise charge against him, with copy to the General Chairman, after which he will be allowed reasonable time for the purpose of having witnesses and representative of his choice present at the hearing. Two working days will, under ordinary circumstances, be considered reasonable time. The investigation will be postponed for good and sufficient reasons on request of either party."

At the investigation, which began at the time scheduled, claimant was represented by the Vice Chairman of the Organization, Mr. K. L. Bushman. At the beginning, Mr. Bushman objected that claimant was not given two working days advance notice of the investigation, and that the charge against claimant was not precise as to his alleged falsification of his application for employment. We consider that portion of the charge:

"Your responsibility for falsification of your application for employment dated September 16, 1977..."

to be sufficiently precise to enable the claimant and his representative to prepare a defense, and met the requirement of Rule 19(a) of the Agreement.

As to the "two-working days notice" issue, we do not consider that portion of Rule 19(a) reading:

"Two working days will, under ordinary circumstances, be considered a reasonable time."

to be mandatory. Further, with an official's life being threatened, certainly does not come under the category of "ordinary circumstances." Also, the following colloquy transpired between the conducting officer, Mr. Taft, claimant's representative, and the claimant:

"Mr. Taft: Mr. Bushman, at this time, being that your agreement does state two full working days, do you wish at this time to postpone the investigation until he has had two full days plus additional time to prepare for the investigation?

Mr. Bushman: Insofar as the way the charge is written, we still would not have a precise charge.

Mr. Taft: Your objection as to the charge will be noted in the investigation. Do you wish to continue with the investigation, or do you request a postponement?

Mr. Bushman: I personally do not request a postponement.

Mr. Coleman do you request a postponement at this time, until you have had two full working days?

A: Well I will do whatever you say but, I guess not if you two wants to do it today, we will do it today.

* * * *

Q. Do you request a postponement?

A. No sir, not if my representative doesn't.

* * * *

Q. Mr. Coleman, are you now ready to proceed with this investigation.

A. Yes sir."

It is clear that the claimant and his representative willingly elected to proceed, and thereby waived any technical or procedural contention concerning the two-working day advance notice issue.

In the investigation substantial evidence was adduced; including claimant's own statement, that claimant did threaten the life of the Roadmaster; and also that he did, in fact, falsify his application for employment when he answered "No" to the question:

"Have you ever been convicted of a felony or misdemeanor?"

Many decisions have been issued upholding the dismissal of employes for falsification of applications for employment, regardless

of the time between the date of application and when the falsification is discovered. Either of the charges against the claimant justified his dismissal.

The Organization complains that the officer who conducted the investigation in this case did not issue the notice of discipline. We have been referred to no rule in the agreement providing who shall prefer charges, conduct investigations, or issue decisions. In the hearing of this dispute, the representative of the Carrier stated that on this property it was not unusual for an officer other than the conducting officer to actually issue decisions in discipline cases. If there is no reference in the agreement as to who shall make the decision regarding discipline, then this Board cannot say that the agreement was violated. We are precluded from writing language into an agreement, or interpreting it any way other than as written.

The claim herein will be denied.

A W A R D

Claim denied.

Paul C. Carter
Chairman, Neutral Member

John D. Crawford
Carrier Member

H. B. Harper
Labor Member

DATE: Nov. 28, 1983