

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY
"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION":

Award No. 6

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-86-1-F12) that:

The dismissal of Track General Helper Anthony Hale was without just and sufficient cause, as a result of defending himself in an altercation which occurred on December 20, 1985.

REMEDY:

Claimant Anthony Hale shall be reinstated to service without loss of compensation, including overtime, and without loss of seniority, vacation rights, or any other benefit or privilege he enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, A. Hale, was discharged on December 31, 1985 for fighting with a fellow employee. The Organization seeks the Claimant's reinstatement.

The arbitration hearing in this matter took place on July 3, 1987. The Claimant was notified by certified mail of the hearing, but he did not attend.

The basic facts are not complex. On December 20, 1985, the date of the events giving rise to this claim, Claimant was a track general helper and was working at a location designated as Philmont Yard on Carrier's railroad division. Claimant was involved in an altercation with another employee, R. Brown.

Article IV, Section 402 (Arbitration) of the labor agreement, cited by the parties, states in relevant part:

(a) If a satisfactory settlement of a grievance cannot be reached between the parties at Step Three of the Grievance Procedure, or there is a disagreement as to the interpretation, application or performance of this Agreement, the Union may, within thirty (30) days from the receipt OF SEPTA's Third Step answer, request that the grievance be arbitrated.

* * * *

(n) It is agreed that failure to take a grievance to the next higher step of the Grievance Procedure or to Arbitration within the time limits specified shall be construed as meaning that the grievance was settled at the preceding step of the Grievance Procedure.

The time limits set forth in the Grievance and Arbitration procedures may be extended in a particular instance by mutual agreement of SEPTA and the Union confirmed in writing.

Work Rules 46 and 48, cited by the Carrier, state:

46. Threats/Assaults

Threatening and/or assaulting a supervisory person and/or any other employee is cause for discharge.

48. Fighting

Fighting will not be tolerated and is cause for discharge.

The Carrier contends that the claim is not arbitrable under the parties' labor agreement, as it was not processed to arbitration in a timely fashion. It is further argued by the Carrier that the claim itself is without substantive merit.

The Organization asserts that the claim is arbitrable, as the actual time limits for processing it were extended by implicit agreement of the parties. Concerning the claim's substantive merits, the Organization maintains that the penalty of discharge was unwarranted, as Claimant was only defending himself from Brown's assaults.

The Board finds the Carrier's argument concerning arbitrability to be compelling. Article IV, Section 402(a) of the labor agreement does require that the Union request that a claim be arbitrated within 30 days of receipt from the Carrier of a third step answer. In this case, the Organization did not file a request for arbitration for approximately one year after receipt of the third step answer. Moreover, although section 402(n) does allow the parties to mutually agree to extensions of time limits for processing grievances, such extensions must be confirmed in writing. Although the Carrier here did not immediately raise the arbitrability defense, there exists no written agreement to extend the 30-day time limit for processing a claim to arbitration.

The Board further finds, however, that there is no need to decide this case on the timeliness issue in order to properly dispose of the claim. The substantive claim itself is clearly without merit.

The evidence establishes that the Claimant committed a dischargeable offense on December 20, 1985. Although Claimant was not originally the aggressor, the Carrier has established that he exceeded the force necessary for self-defense and continued to participate in the altercation after he was free to retreat. Moreover, Claimant used a dangerous weapon, a lug wrench, to unnecessarily strike Brown. In these circumstances, Claimant's

actions violated Work Rules 46 and 48 and constituted just cause for discharge. Accordingly, despite the Organization's best efforts, the claim must be denied.

AWARD

Claim denied.

R. B. Birnbauer
R. B. BIRNBRAUER
Carrier Member

W. E. LaRue
W. E. LaRUE
Organization Member
Consent

S. E. Buchheit 8-26-87
S. E. BUCHHEIT
Neutral Member