

NOV 05 1990

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 1037

Case No. 10

PARTIES: Brotherhood of Maintenance of Way Employes

TO :

DISPUTE: CSX Transportation, Inc.

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

Dismissals of Bridge Tenders C.E. Gowen, ID# 169335 and L.A. Dickerson, ID# 156324 as a result of investigation held June 20, 1990 at Jacksonville, Florida."

FINDINGS:

As a result of an altercation which took place between C.E. Gowan and L.A. Dickerson on June 4, 1990, the two Claimants were charged with the following:

Violation of Rule #9 which reads in part: 'Employees must not enter into altercations, play practical jokes, scuffle or wrestle while on duty or while on Company property.'

A formal hearing was held on June 20, 1990, and as a result, Claimants were discharged. The Organization thereafter filed a claim on Claimants' behalf, challenging their dismissals.

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 Claimants were guilty of violation of Rule #9 which prohibits altercations, scuffling, and wrestling while on duty or while on Company property. The record contains admissions by both of the Claimants that they were engaged in a fight on the date in question. Although both of them blame each other for starting it, the record is clear that an altercation did take place and the Claimants violated the applicable rule.

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.

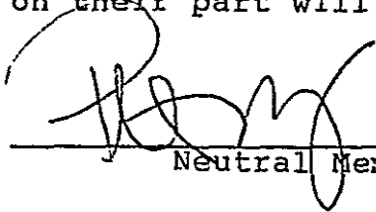
There is no question that fighting on the job is the type of action that can lead to one's discharge, even on a first offense. There is no question that a physical altercation can lead to serious injury and that the employer does not have put up with employees who engage in fighting on the job.

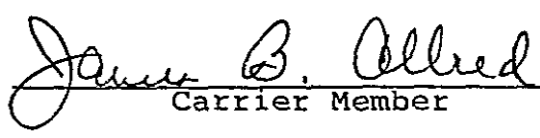
However, the record in this case reflects that the two Claimants have been working for the Carrier for an extremely long time with completely clean personnel records. Claimant Dickerson was born in 1941 and began his service as a Bridge Tender with the Carrier in 1969. At the time of the incident in June of 1990, he had been employed with the Carrier for 21 years. Claimant Gowan was born in 1945 and began his service as a Trackman in 1974. At the time of the incident he had served 15 years for the Carrier. The service records that are set forth in the record reflect no previous disciplinary history. Consequently, even though this Board recognizes that fighting on the job is the type of action that can lead to discharge on the first offense, given the long term service of these employees this Board believes that they both deserve a last chance.

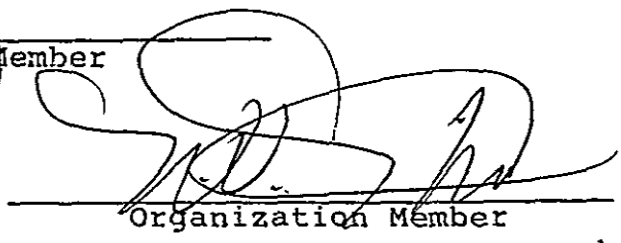
Therefore, this Board finds that the Employees will be reinstated but without back pay and that the period that they have been off from work will be considered a lengthy suspension. The employees should be put on notice that any further behavior of this kind will lead to termination.

Award:

Claim sustained in part. The discharges of the two Claimants shall be reduced to a lengthy suspension. The Claimants should be returned to work within ten days of the receipt of this award but without back pay. The Claimants should be put on notice that any further misbehavior on their part will lead to termination.

  
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Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Organization Member

Date: 10-16-90