SPECIAL BOARD OF ADJUSTMENT NO. 1048

AWARD NO. 154

Parties to Dispute:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK SOUTHERN RAILWAY COMPANY

(Carrier File MW-CHAR-06-15)

Statement of Claim:

Claim on behalf of R. C. Allen for reinstatement to service after his dismissal following a formal investigation held on October 13, 2006, concerning conduct unbecoming an employee and violation of safety and General Conduct Rule GCR-1 in connection with an altercation with co-worker Rodney Hagan on September 6, 2006, in the vicinity of Markham, Illinois.

Upon the whole record and all the evidence, after hearing, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and this Board is duly constituted by agreement under Public Law 89-456 and has jurisdiction of the parties and subject matter.

This Award is based on the facts and circumstances of this particular case and shall not serve as a precedent in any other case.

AWARD

After thoroughly reviewing and considering the transcript and the parties' presentation, the Board finds that the claim should be disposed of as follows:

BACKGROUND

R. C. Allen, the Claimant herein, entered the Carrier's service on May 19, 1980 as a Truck Laborer. The Claimant is represented by the Brotherhood of Maintenance of Way Employes.

On September 6, 2006[1] the Claimant was assigned as one of four Repairmen on Track and Surface Gang 26. Repairman R. M. Hagen, who served as a Roadway Equipment Specialist, was in the back

[1] All dates noted herein occurred in calendar year 2006 unless otherwise noted.

of the Company truck preparing to lower a new boom to install on a Tie Crane. The record evidence shows that the Claimant approached Mr. Hagen and inquired if he had a strap, which would be used in lowering the boom out of the truck. Mr. Hagen responded that he did not need the Claimant's assistance. The record shows that the Claimant responded with a barrage of obscenities directed at Mr. Hagen. When Mr. Hagen inquired of the Claimant why he was acting in such a manner, the Claimant continued directing obscenities at Mr. Hagen. Within a short time, the Claimant challenged Mr. Hagen to come down from the back of the truck, indicating that he would "stomp," "kick" or "whip his ass." The Claimant's verbal and threatened physical assault on Mr. Hagen caused Mr. Hagen to feel threatened to a point where he remained in the cab of the truck and called his Supervisor for assistance.

When Supervisor D. F. Lange came on the scene, he removed the Claimant and had him work elsewhere. Of important note to the Board is the fact that while in the truck with Supervisor Lange, the Claimant commented on meeting Mr. Hagan a few weeks earlier upon the Claimant's return to service from a prior discipline, and stated to Supervisor Lange that he (the Claimant) "should have whipped his ass right then, and then he would have respect for me."

Ultimately the matter came to the attention of General Supervisor R. D. Isaacs who obtained written statements from one co-worker as well as from Supervisor Lange. Following his review of these statements, General Supervisor Isaacs made a decision to remove the Claimant from service pending an investigation. Two other co-workers provided statements about the September 6th incident.

By letter dated September 18, 2006, the Claimant was cited to a formal investigation to determine his responsibility, if any, in connection with conduct unbecoming an employee and violation of Safety and General Conduct Rule GCR-1. The investigation was ultimately conducted on October 13th. The Claimant was at all times represented by the Organization. By letter dated October 30th, the Hearing Officer, following his review of the transcript together with evidence admitted at the formal investigation, determined that the Claimant was guilty of the charges against him. The Claimant was thereupon dismissed from service. The Organization took exception to the discipline assessed, and the instant claim for review ensued.

DISCUSSION

The record supports the conclusion that the Claimant did as charged. The Claimant's testimony which essentially amount to a claim that he didn't recall the incident was overcome by statements made by the Claimant's co-workers, each of whom confirmed the details of the Claimant's abusive and unprofessional conduct. Accordingly, following a careful review of the record, the Board finds and concludes that the Carrier satisfied its burden in demonstrating that the Claimant's actions on September 6, 2006 rose to a level of conduct unbecoming an employee in violation of Safety and General Conduct Rule GCR-1 which provides, in relevant part:

> Employees are to conduct themselves in a professional manner and not engage in behavior or display material that would be considered offensive or inappropriate by co-workers, customers, or the public. Offensive or inappropriate behavior includes making disparaging remarks . . .

Given the Board's finding noted above, it is clear that the Claimant must bear total responsibility for his unprofessional conduct. Claimant's comments were out of line, unnecessary and unprofessional. However, while the Claimant's behavior cannot be excused, it was not of the kind exhibited in cases cited by the Carrier where employees engaged in abusive, violent and vulgar tirades against their supervisors or coworkers while in the presence of others. Indeed, while abusive, vulgar and violent tirades warrant termination from employment, the circumstances here present, while serious, do not warrant the Claimant's termination.

Having concluded that the Grievant did as charged, there remains a question of the appropriate penalty. In determining an appropriate penalty, the Board has taken notice of the Claimant's lengthy service with the Carrier, dating back to 1980. The Board has also taken notice of the Claimant's checkered disciplinary record, consisting of five suspensions (4 actual and 1 deferred), two suspensions for insubordinate conduct, and two instances where the Claimant had been discharged but reinstated. The last such offense occurred in 2004, and it appears that aside from the instant and serious offense, the Claimant managed to keep out of trouble. Notwithstanding the Claimant's prior disciplinary record, the Board concludes that his 26 years of service with the Carrier must count for something. Accordingly, the Board finds that the Claimant is due one last chance to demonstrate

that he is capable of acting in a professional manner, as well as following all reasonable rules and regulations of the Carrier.

CONCLUSION

For the reasons noted and discussed above, the Board finds and concludes under the unique facts of this case that the penalty of dismissal from service is excessive. While the Board finds the Claimant's reinstatement to service is appropriate, such reinstatement shall be conditioned upon his attendance and successful completion of an Anger Management Program as determined and designated by the Carrier. The Carrier shall be obligated to determine and designate such a program within 30 days following its receipt of this Decision. The Claimant shall be obligated to provide the Carrier with proof of successful completion of the Anger Management Program within 90 days following the date the Carrier sends the Claimant a letter designating approved programs. The Board shall retain jurisdiction over any question relative to the Claimant's compliance, it being understood that the Claimant's failure to comply shall result in the Claimant's continued termination from employment. Following the Claimant's successful completion of said program, the Carrier is ordered to reinstate the Claimant to service, without compensation for the time held out of service. Given the serious nature of the Claimant's conduct which gave rise to his dismissal from service, the Board finds and concludes that the Claimant must lose all seniority except for seniority earned as a Laborer. Finally, and as a last note of warning, let this decision serve as formal notice to the Claimant that he is on "thin ice", and accordingly, if he has any hopes of continuing his employment with this Carrier, he is duty bound to act in a professional manner at all times, and to follow all Rules, Regulations and Procedures promulgated by the Carrier for the efficient and safe operation of its business as well as the general welfare of all its employees.

Dennis J. Campagna
Chairman and Neutral Member

D.D. Bartholomay
Organization Member

D.L. Kerby
Carrier Member

Dated: Buffalo, N.Y. 8-9-07