

SPECIAL BOARD OF ADJUSTMENT NO. 280

**PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
TO)
DISPUTE) ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM

1. The Carrier violated the effective Agreement when Machine Operator J. J. Mickens was unjustly dismissed from service (System File MW-87-57-CB/465-68-A).
2. Claimant Mickens shall now be reinstated to service with pay for all time lost commencing September 1, 1987, and on a continuing bases, with seniority, vacation and all other benefits due him restored and with charge letter of September 3, 1987, removed from his personal record.

OPINION OF BOARD

As a result of charges dated September 3, 1987, investigation held on September 9, 1987 and by letter dated September 16, 1987, Claimant, a roadway machine operator with slightly in excess of three years seniority, was dismissed for violation of Rule 607.

On September 1, 1987 Claimant's assigned spike driver developed a mechanical problem. While speaking with a mechanic, S. M. Delventhal, concerning who was responsible for making the minor repairs necessary, an altercation took place wherein Claimant shoved Delventhal.

The record shows that Assistant Roadmaster R. A. Jackson testified that after being called to the scene of the dispute and talking with Claimant and Delventhal:

- A. ... I asked Mr. Mickens [Claimant] did you shove Mr. Delventhal, he said yes. I asked him if Mr. Delventhal touched him[. H]e said no. ...

Foreman D. E. Smith testified about a conversation he had with Claimant as follows:

- A. ... And I asked him how come he shoved Mike [Delventhal] and he [Claimant] said he got his temper up and I asked him if Mike had cussed at him or anything, he said no. ...

The Carrier concluded that what started as a verbal disagreement turned to physical

aggression by Claimant against Delventhal. Rule 607 prohibits acts of hostility and quarrelsome conduct. We find that substantial evidence supports the Carrier's conclusion that Claimant violated the rule as charged. Claimant's statements to Roadmaster Jackson and Foreman Smith are, for all purposes, admissions of the charged misconduct and demonstrate that Claimant was not acting in self defense when he shoved Delventhal.

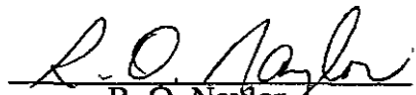
The fact that Claimant gave a different version of the events asserting a justification existed for his pushing Delventhal in alleged self defense does not change the result. Absent sufficient reason demonstrated by the record, it is not the function of this Board to set aside credibility determinations. Claimant's version was not credited and we are unable to find sufficient reason established by this record to come to a different conclusion.


However, we are not of the opinion that dismissal was warranted. Words were obviously exchanged between the two employees. Although we find substantial evidence that Claimant's physical aggression towards another employee clearly violated the rule as charged, in light of totality of the circumstances surrounding the incident, we believe dismissal to be excessive. We shall therefore require that Claimant be returned to service with seniority unimpaired but without compensation for time lost.

AWARD

Claim sustained in part. Claimant shall be returned to service with seniority unimpaired. Return to service shall be without compensation for time lost.


Edwin H. Benn
Neutral Member


R. O. Naylor
Carrier Member


S. A. Hammons, Jr.
Organization Member

Houston, Texas
June 11, 1990