

SPECIAL BOARD OF ADJUSTMENT NO. 313

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
UNION PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

- "(1) The dismissal of Sectionman Christopher C. Lang on Sunday, July 13, 1958, was without just and sufficient cause, was discriminatory, arbitrary, capricious, in abuse of the Carrier's discretion and based upon unproven and unsupported charges.
- "(2) Sectionman Christopher C. Lang now be reinstated with seniority, vacation and all other rights unimpaired and be reimbursed for the assigned working hours actually lost in conformance with the provisions of Rule 40(d)."

FINDINGS:

Special Board of Adjustment No. 313, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

The carrier and employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Board has jurisdiction over the dispute involved herein.

Claimant made a violent physical attack upon his foreman, in a public place, while both were off duty. The altercation grew out of a dispute involving their supervisor-employee relationship. Claimant was discharged, given a hearing as provided by the agreement and the discharge was sustained.

The Organization attempts here to try the foreman and to show that he was a disagreeable and unstable person. He may have been, but this does not clear the claimant of guilt nor mitigate his fault to the extent of justifying our reversing the hearing officer.

To void the hearing, the Organization must demonstrate that it was not full and fair and come forth with clear and competent evidence to prove that any illegal irregularity in procedure materially prejudiced the substantial rights of the claimant. We find no irregularities, no malice, arbitrariness, capriciousness, unreasonableness or gross mistake or discrimination on the part of the hearing officer.

The findings of the hearing officer were supported by competent evidence. The measure of discipline was consistent with the gravity of the offense.

The claim should be denied.

AWARD:

The claim is denied.

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(s) Marion Beatty

Marion Beatty, Chairman

(s) A. J. Cunningham

A. J. Cunningham, Organization Member

(s) A. D. Hanson

A. D. Hanson, Carrier Member

Omaha, Nebraska
November 21, 1960