

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 109
Docket No. 116

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: Chicago and North Western Transportation Company

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

- (1) The Carrier violated the Agreement when it dismissed Assistant Track Foreman M.J. Rubeck as a result of an investigation held on June 11, 1986, in that such action was unwarranted, unjust and an abuse of the Carrier's discretion. [Organization File 6LF-2129D; Carrier File 81-86-132]
- (2) The Claimant shall be allowed the remedy prescribed in Rule 19(d)."

FINDINGS:

This Board, upon the whole record and all the evidence, finds and holds that the employees and the Carrier involved are respectively employees and Carrier within the meaning of the Railway Labor Act as amended and that the Board has jurisdiction over the dispute herein.

On June 2, 1986, Claimant became involved in an altercation with Chief Dispatcher G.H. Boeselager; the incident occurred off of Carrier property. Claimant subsequently was directed to attend a formal investigation of the charge:

Your responsibility for entering into a verbal and physical altercation with Chief Dispatcher, G.H. Boeselager at approximately 9:35 P.M. on June 2, 1986, near the Dawes County Courthouse in Chadron, Nebraska.

The investigation was held as scheduled, and a copy of the transcript has been made a part of the record. We find that the investigation was conducted in a fair and impartial manner.

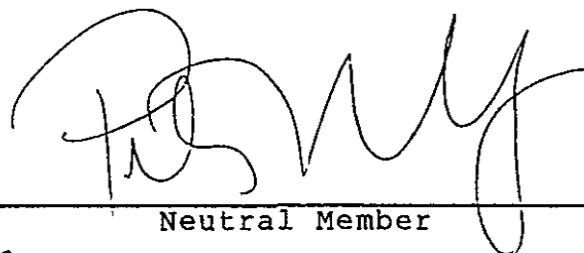
This Board has reviewed the evidence and testimony in this case, and we find that there was sufficient evidence in the record to support the finding that the Claimant was guilty of the offense with

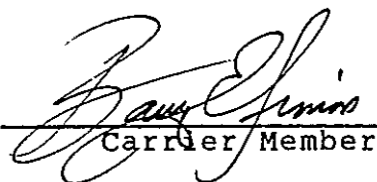
which he was charged. Although the incident took place after hours and off company property, this Board finds that there is a sufficient nexus between the incident and the workplace to support the Carrier's imposition of discipline.

Once this Board has determined that there was sufficient evidence 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 it to be unreasonable, arbitrary, or capricious. In this case, we find that the type of incident plus the background of the Claimant are such that the Carrier's action in terminating the Claimant for the offense of which he was found guilty cannot be viewed as unreasonable. Therefore, the claim must be denied.

Award:

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: April 13, 1988