

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 924

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
CHICAGO & NORTH WESTERN TRANSPORTATION CO.

Case No. 237 AWARD 213

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Track Foreman S. M. Garcia for allegedly discharging and disposing of a firearm at the California Avenue Section House and failing to report same on February 15, 1994 was without just and sufficient cause and excessive (Organization File 9KB-6091D; Carrier File 81-94-77).
2. Track Foreman S. M. Garcia shall now be reinstated with seniority and all other rights unimpaired and compensated for all wage loss suffered.

FINDINGS:

Claimant S. M. Garcia was employed by the Carrier as a track foreman at the California Avenue facility.

On February 15, 1994, the Claimant allegedly found a gun lying on the ground on his way to work. He states that he picked it up and brought it into the Section headquarters. He further states that "out of curiosity" he started "moving" the gun and "checking the chamber", and then the weapon discharged four times. The Claimant then threw the gun into a dumpster outside of the building. He did not report the incident to the Carrier.

Two days later a Carrier a Carrier employee reported the incident to the

roadmaster. When the roadmaster questioned the Claimant, he admitted discharging the weapon on the Carrier's property.

Consequently, the Carrier charged the Claimant with "possessing, discharging and disposing of a firearm....exposing yourself and fellow employees to extreme danger on February 15, 1994; and your failure to promptly report this incident."

A formal hearing was held into the allegations. The Claimant was found guilty and dismissed from service.

The parties not being able to resolve the issue, this matter comes before this Board.

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 Claimant was guilty of discharging and disposing of a firearm while on duty and then failing to report the incident. The Claimant's admissions make it clear that he was involved in the wrongdoing with which he was charged by the Carrier.

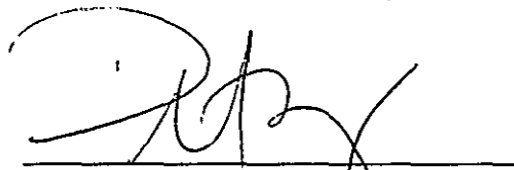
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

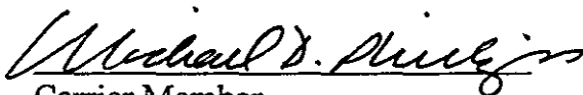
The Claimant in this case was first employed by the Carrier on May 7, 1970. Consequently, he has been an employee of the Carrier for nearly one-quarter of a century. The Claimant was found guilty of a very serious charge here. However, given his lengthy

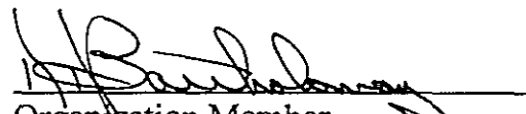
seniority and his relatively good background, which includes no previous suspensions over the twenty-five years of employment, this Board finds that the Carrier's action in dismissing this long-term employee for this very serious offense was unreasonable and too severe. This Board takes note that the Organization has brought forward Award No. 44 of Public Law Board No. 1844. In that case, the claimant was issued a thirty-day suspension for unloading his nine-millimeter automatic pistol in an effort to "scare" trespassers away from the carrier's property. That case, in many ways, involves more serious wrongdoing than the actions of the Claimant in this case. In any event, reinstating the employee with what will be more than a one-year suspension is sufficient discipline for this serious wrongdoing on the part of the Claimant.

AWARD

Claim sustained in part. The Claimant shall be reinstated without back pay. The time that he was off shall be considered a lengthy suspension for his very serious wrongdoing.


PETER R. MEYERS
Neutral Member


Carrier Member


Organization Member

DATED: 4-19-95

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