

SPECIAL BOARD OF ADJUSTMENT NO. 924

Award No. 38
Docket No. 37

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 dismissal of Mechanic D. A. Miller for allegedly entering into an altercation with the Division Engineer and the alleged insubordination in connection therewith was without just and sufficient cause and in violation of the Agreement. (Organization File 2D-4271; Carrier File 81-84-69-D).
- (2) Mechanic D. A. Miller 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 employee and the carrier involved, are respectively employee and Carrier within the meaning of the Railway Labor Act as amended, and that the Board has jurisdiction over the dispute herein.

Prior to the occurrence giving rise to the claim herein, claimant was employed by the Carrier as a Work Equipment Repair Mechanic, in the Engineering Department of Carrier's Central Division.

During the morning of November 10, 1982, claimant, who had previously been removed from service pending investigation involving another matter, returned to the Carrier's property to reclaim tools from a Company truck, which he alleged belonged to him. He was informed by the Division Engineer that it would be necessary for him to produce receipts proving ownership of the tools, or be accompanied to the vehicle where the tools were stored by a Supervisor who could positively identify any material that was the property of the Carrier. A rather heated discussion ensued, with claimant stating that he would proceed to pick up his tools, and there was nothing that the Division Engineer could do to stop him. The claimant allegedly shoved the Division Engineer toward the wall and walked out.

On November 10, 1983, claimant was instructed to attend investigation on November 15, 1983, on the charge:

"Your responsibility in connection with your failure to comply with Rule 7 and 11 of the General Regulations and Safety Rules; specifically your entering ^{into} an altercation with Mr. M. G. Arter, Division Engineer; at approximately 11:30 A.M. on November 10th, 1983 at Des Moines, Iowa and your insubordination in connection therewith."

A copy of the transcript of the investigation has been made a part of the record. At the beginning of the investigation some question was raised about it being conducted while claimant was on scheduled vacation, but claimant did state that he was ready to proceed with the hearing. We consider that this constituted waiver of any objection.

Rules 7 and 11 of Carrier's General Regulations and Safety Rules provide:

Rule 7: "Employees are prohibited from being careless of the safety of themselves or others, disloyal, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious or conducting themselves in such a manner that the railroad will be subjected to criticism and loss of good will, or not meeting their personal obligations."

Rule 11: "Playing practical jokes, scuffling, wrestling, or fighting while on duty or on Company property, as well as throwing of tools, materials, or other objects is prohibited."

In the investigation substantial evidence was presented in support of the charge against claimant by the Division Engineer and a B&B clerk, and that claimant did actually shove the Division Engineer. There were conflicts between claimant's testimony and the testimony of others; however, it is well settled that a Board of this nature does not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the Carrier. The Board is not justified in reversing the Carrier's actions simply because of conflicts in testimony. We also note that claimant's prior disciplinary record was far from satisfactory. His actions in the present case, coupled with his prior record, fully warranted the discipline imposed.

A W A R D

Claim denied.

Paul C. Criter
Chairman, Neutral Member

J. D. Crawford
Carrier Member

H. G. Hopper
Labor Member

Dated: May 29, 1985