

PUBLIC LAW BOARD NO. 6952

PARTIES TO THE DISPUTE:

Brotherhood of Locomotive Engineers
and Trainmen

AWARD NO. 6
CASE NO. 6

-- and --

Iowa, Chicago & Eastern Railroad

STATEMENT OF CLAIM:

“Claim of Mr. Robert Brecht for reinstatement to service, pay for lost wages, and that his record be cleansed of any wrong doing in this situation.”

FINDINGS:

This Public Law Board No. 6952 finds that the parties are Carrier and Employee, within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

By letter dated May 12, 2006, the Claimant, Switch Foreman Robert Brecht, was notified that he had been found responsible for violation of General Code of Operating Rules 1.6 and 1.7 relating to a physical altercation involving the Claimant and Engineer Sharp; and the Carrier notified Mr. Brecht he was terminated from employment as follows:

A review of the facts surrounding the incident that occurred at approximately 1100 hours on April 18, 2006, reveals that while a crewmember of the 919 Local at the IPSCO plant, a physical altercation between Mr. Sharp and yourself did occur, in which you displayed quarrelsome, discourteous conduct, an act of hostility, misconduct, and a disregard for the rules.

The formal investigation session conducted on April 24, 2006 to investigate this matter revealed a violation of General Code of Operating Rules 1.6 and 1.7.

As a result of these violations, your employment with Iowa, Chicago & Eastern Railroad is hereby terminated.

Your last paycheck will be withheld until all Iowa, Chicago & Eastern Railroad company property and equipment are returned to MTO Phil Stick or MTO Dan Freeman at the Nahant Depot located at 2300 Railroad Avenue, Davenport, IA.

Sincerely,
S/ John P. Deming
Terminal Superintendent

Engineer Sharp was also found responsible for the same rules violations but he was previously returned to service under an alternative procedure set forth in the Arbitrated Agreement governing the parties.

Substantial evidence of record including the written statements of Engineer Sharp and Switch Foreman Brecht and their testimony at the investigation support the Carrier's determination that both employees were in violation of Rules 1.6 and 1.7.

The Conducting Officer vigorously questioned both individuals as to the extent of the physical contact between them. Examples follow:

259. Question: Okay, Mr. Sharp, we were talking about the contact being made and the statements being made here prior to changing tapes and the time is now 1821 hours.

Mr. Sharp, your statement says that, '*that without provocation he struck his forearm in my chest.*' Did Bob Brecht strike his forearm into your chest?

Answer: You read it wrong there.

260. Question: Will you please read it to me?

Answer: He stuck his forearm in my chest.

261. Question: Okay, he stuck...

Answer: I think you're trying to make it sound like there was striking going on there.

262. Question: Okay, so he stuck his forearm into my chest. Did Bob Brecht stick his forearm into your chest?

Answer: He grazed my chest reaching for the cell phone.

(Tr-39)

* * *

285. Question: Well, I'm asking you what actually happened. You're saying later on, but what actually happened? Your statement says, 'that he slammed on the independent, and without provocation he stuck his forearm in my chest.' That total contradicts what Mr. Brecht's statement says.

Answer: I wrote that believing what happened.

286. Question: So did Mr. Brecht try to take the cell phone from you?

Answer: Yes.

287. Question: Physically?

Answer: He reached for it and there was incidental contact.

288. Question: So did he physically try to take the cell phone from you?

Answer: Yes.

289. Question: And did you willing give him the cell phone?

Answer: No. ...

(Tr-42)

See also Questions 131 and 132.

Under questioning by his representative, Engineer Sharp testified in part:

375. Question: Okay. I just want to reiterate that point and I also want to reiterate the point that the words, the terms like struck, hit, are all terms that... have you used those terms either in your written statement...

Answer: No.

376. Question: Or in your verbal statement today that anybody was struck...

Answer: No.

377. Question: Or hit.

Answer: I haven't used that.

(Tr-53)

The record makes clear that no blows were struck in the incident.

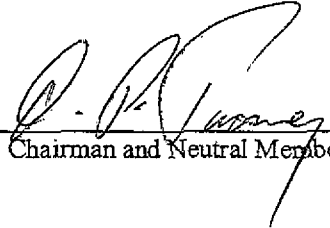
As stated previously, Engineer Sharp was returned to service after a disciplinary suspension. As between Mr. Sharp and Mr. Brecht, the record reveals that Mr. Brecht had greater culpability than Mr. Sharp. Both men believed they needed the cell phone to pursue company business. It was Mr. Brecht who got out of his seat and stepped across toward Mr. Sharp after Sharp had refused to hand over the cell phone after a second demand, and Brecht testified that as he got near Sharp and again asked for the phone, he put his hand out to give Sharp an opportunity to give him the phone (Tr-20). When contact occurred and the phone was not given, the record reveals that Brecht withdrew using boisterous language, and called his supervisor to avoid "...pushing the issue any further" (Tr-20, 71)

We find that while Rule 1.6 and 1.7 were violated, permanent dismissal is excessive in this case. Mr. Brecht's disciplinary record is less than desirable, and he has had no Rule 1.6 or 1.7 violations of record. We find that any discipline beyond a six month suspension in this case to be clearly excessive. Mr. Brecht shall be returned to service with all rights unimpaired and the first six months out of service shall be considered a disciplinary suspension. He shall be made whole for the subsequent period of time with back pay.

AWARD

As per Findings.

Order: The Carrier is required to comply with this award within thirty days.



Chairman and Neutral Member

Employee Member

Carrier Member

Dated: _____