

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
TO )  
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM:

1. That the Carrier's decision to assess Claimant W. L. Turner thirty (30) demerits after investigation February 14, 1989 was unjust.

2. That the Carrier now expunge thirty (30) demerits from claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation February 14, 1989 because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates claimant is guilty of violation of rules he was charged with in the Notice of Investigation.

FINDINGS: In this dispute the claimant was notified to attend an investigation on February 14, 1989 concerning a report that he was quarrelsome and hostile toward a fellow employee while on duty starting at Bridge 1074.6, El Paso Subdivision, at approximately 11:00 a.m. on January 11, 1989 and continuing in the bunk car on Company property, Hatch, New Mexico at approximately 7:00 a.m. on January 12, 1989 in possible violation of Rules A and 1007, Safety and General Rules for All Employees, Form 2629, Standard, effective April 1, 1988.

Pursuant to the investigation the claimant was assessed 30 demerits. The Union filed a claim in behalf of the claimant, and the matter is now before the Board for a decision.

Pile Driver Engineer F. S. Apadoca testified that he was the pile driver engineer on January 11 and 12, 1989. He stated that he was working on the wingwall with Don Taylor and Joe Cebeda and that the claimant was on the backhoe.

Mr. Apadoca testified that Don Taylor asked him to get a bolt, and he told him to get his own bolt but explained they had been joking all morning. He stated that at this time claimant Turner got involved and told him to get the bolt, and he advised the claimant that if he wanted it, get it himself.

This witness then testified that Mr. Cebeda needed some washers, and he went to the truck and got some washers for him, but by the

time he returned with the washers, Foreman Shetter "jumped" him. He testified that the claimant stepped up to Foreman Shetter and said: "Your boy doesn't want to get bolts for the mechanics." He stated that at this time Foreman Shetter jumped him, and that's when he got on the claimant.

Mr. Apadoca later testified that he told the claimant: "You go around talking about people, like John Freiheich, and he goes around telling Shetter everything, and you are the worst person here. You sneak around and tell people something behind their back and then you go around telling everybody else its them doing it, and you're doing it the whole time."

This witness further testified that he did cuss the claimant and that the claimant cussed him. He stated he did not ask claimant to fight, and the claimant did not offer to fight him.

Mr. Apadoca then testified that on January 12 he walked into the bunk car and asked for everybody's attention and stated he was speaking to Mr. Shetter and said he wanted to apologize for yesterday and said maybe he was wrong.

He further testified that he then turned to the claimant and pointed his finger at him and said he had better hope he don't get on the pile driver, which I meant he was going to be a greasy, little pig. He also stated that he didn't get a chance to say anything because the claimant told him not to point his finger at him and he was a sorry so-and-so.

Mr. Apadoca testified that at this point he and the claimant began to exchange words, and he then asked the claimant if he wanted to step off Company property. He stated that he turned to the foreman and asked if he was going to cut them some time, and the foreman said no, and that was all that was said.

The claimant said his name was listed as W. E. Turner on the notice to appear at the investigation, but his name was actually W. L. Turner, and he was the B&B Mechanic on Gang 75 at Hatch, New Mexico. He stated that on the morning of January 11 at approximately 11:00 a.m. they were building a footwall for retainer wall to hold the dirt back to keep the bridge from washing out, about 75 or 80 feet long and about four feet high.

The claimant stated he was operating the backhoe, and he stopped what he was doing and got off because they lacked one bolt having it put together so that he could start putting dirt in behind the wingwall. He testified that Mr. Apadoca was told to get a bolt. He stated that he told Mr. Apadoca he was not operating the pile driver, and while he was a member of the gang, he had to do what the mechanics told him. He stated that Mr. Apadoca replied that

he did not have to take any orders from any mechanics. He stated that Joe Cebada informed Mr. Apadoca what when he was on the gang he had to take orders from the mechanics.

The claimant stated that he and Mr. Apadoca had a verbal confrontation which got a little out of hand, and he told him that when the foreman, Jim Shetter, came back, they would resolve the matter. He testified that when the foreman came back, he advised him he was going to have to talk with Mr. Apadoca and further told him that Mr. Apadoca did not want to take orders from the mechanics.

The claimant testified that when Mr. Shetter approached Mr. Apadoca and asked him why he did not take orders, Mr. Apadoca got aggravated and jumped on the wingwall and confronted him and wanted to fight. He admitted that he and Mr. Apadoca cussed each other and further stated that Mr. Apadoca asked him to fight.

Claimant Turner testified that he was in the bunk car at Hatch, New Mexico at 7:00 a.m. on January 12 when Mr. Apadoca came into the car and pointed to him and stated what when he got on the pile driver, he had better watch out, or something to that effect.

The claimant further testified that when Mr. Apadoca pointed his finger at him, he told Mr. Apadoca not to point that thing at him, and then Mr. Apadoca got right up in his face and started pointing at him, and he got aggravated, and they exchanged words. He then testified that Mr. Apadoca went to Foreman Shetter and asked him to give them ten minutes off Company property -- that he was going to take care of this -- but I told Mr. Apadoca I was not going to fight him, he was not worth my job.

Jim Shetter, B&B Foreman, testified that Mr. Apadoca did offer to fight the claimant on January 11 but the claimant did not offer to fight Mr. Apadoca on that date. He testified that Mr. Apadoca did state that he was going to whip the claimant's ass. He further testified that Mr. Apadoca was working with the gang and did not have a pile driver to operate on that date.

Foreman Shetter testified that on January 12 Mr. Apadoca came in the outfit and said he made a mistake the day before and went to the claimant and started cussing him and pointing his finger at him. Mr. Shetter stated Mr. Apadoca's nose was about two inches away from the claimant's nose, and Mr. Apadoca asked him (Shetter) to take him off the clock for ten minutes so he could take the claimant outside and whip him.

Foreman Shetter also testified that Mr. Apadoca said he was going to whip the claimant's ass and stated it more than once. He also

testified that Mr. Apadoca stated: "When I'm on the pile driver, if you try to give me any signals, I'm gonna get you."

E. H. Graham, B&B helper testified that he was on the job January 11 and 12 and both employees were arguing, and Mr. Apadoca did not think he had to do what the carpenter said, and he was upset at the claimant for telling the foreman what was going on. He did testify that on the morning of the 12th Mr. Apadoca invited the claimant out to fight. He testified there were some cuss words used on the 11th.


After a study and review of all the testimony and evidence of record, it is the opinion of the Board that thirty demerits is excessive under the circumstances herein. The Board finds that any demerits in excess of fifteen demerits is excessive. The Carrier is directed to reduce the discipline assessed to fifteen demerits.

AWARD: Claim disposed of as per above.

ORDER: The Carrier is directed to comply with this award within thirty days from the date of this award.

  
Preston J. Moore, Chairman

*Signed at Chicago, Illinois  
April 10, 1989*

  
Organization Member

  
Carrier Member