

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. Carrier's decision to remove New Mexico Division Welder Helper K. Phillabaum from service, effective February 9, 1989 was unjust.

Accordingly, Carrier should be required to compensate Claimant Phillabaum for all wages lost from February 9, 1989 to April 3, 1989.

FINDINGS: This Public Law Board No. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Clovis, New Mexico on February 28, 1989 concerning a report he was allegedly insubordinate and quarrelsome when he allegedly refused to perform duties as instructed by Welder Bilbrey and Foreman Calzada at the East Switch, Cardenas, February 9, 1989 between 12:30 p.m. and 1:00 p.m. and to determine the facts and place responsibility, if any, involving possible violation of Rule 1007, Safety and General Rules for All Employees, 2629 Standard, April 1, 1988.

Pursuant to the investigation the claimant was found guilty of being insubordinate and quarrelsome and was dismissed from the service of the Carrier.

The Carrier contends the claimant was offered leniency reinstatement with his seniority rights unimpaired but without pay for time lost, and the claimant accepted the Carrier's offer and reported for duty on April 4, 1989. On that basis the Carrier contends the claim is moot.

The transcript contains 35 pages of testimony, all of which has been studied by the Board. In studying the exhibits the Board finds a letter of reinstatement dated April 4, 1989 which advised claimant: "This is to advise you are being reinstated to service on a leniency basis, without pay for time lost, but with seniority and all other rights unimpaired effective immediately."

The Board has also studied Third Division Award 18437 cited by the Carrier. The letter of April 4, 1989 does not act as a bar to this claim for pay for time lost. There is no evidence of any agreement between the claimant and/or the Union that they were accepting the

reinstatement with the provision that the claim for time lost would be waived. Consequently, the claim for pay for time lost must be determined by the Board.

Welder G. B. Bilbrey testified the claimant was his helper on February 9, 1989 between 12:30 p.m. and 1:00 p.m., and while they were working together, the claimant refused his order when he said: "Come on Phillabaum, it's time to take the 'pot off'" and claimant said: "No."

Welder Bilbrey testified he then raised his voice and said: "Come on, let's go" and the claimant replied: "It's not time yet." He testified it took both of them to remove the pot. He then stated that when the claimant refused to comply with his order, he walked off to tell the foreman, and then the claimant and another helper removed the pot.

The claimant's representative attempted to bring out the fact that there were hard feelings between the claimant and Mr. Bilbrey. The Hearing Officer erred in not allowing that information to be brought out. However, the claimant admitted they had had trouble in the past, so the matter is not of sufficient importance to reverse the decision of the Carrier.

Foreman P. D. Calzada testified that Welder Bilbrey came to him and stated he was having a problem with the claimant, and he then talked to the claimant. He testified he told the claimant: "You need to do as your welder instructs you. Is there a problem with that?" He testified the claimant replied in a real nasty manner: "Have you got a problem with that? You go talk to Bostick," and I said to him: "Well, would you rather talk to the Roadmaster" and the claimant replied: "Let's go."

Foreman Calzada testified he could not get hold of the Roadmaster but did reach the Track Supervisor on the radio. He then stated that he instructed the claimant to go to the truck, and the claimant did not comply.

The claimant testified that when Mr. Bilbrey directed him to remove the pot, the three minutes it was supposed to sit had not expired. He admitted he did not follow the orders of the welder because the three minutes were not up.

The claimant further testified that when the foreman directed him to sit in the truck, he sat in the truck, and then got out and was going to ask him why he couldn't continue to do his work until the Roadmaster was present. He testified the foreman told him to get back in the truck, and he remained there until he talked to Mr. Mayhill. He stated that Foreman Calzada caused him to make his tone of voice different.

Foreman Calzada testified that he was not abusive when he talked to the claimant, and in fact, put his hand on the claimant's shoulder when he was talking to him and was not mad but just wanted to discuss the matter with the claimant. He stated that obviously the claimant took offense. He testified the claimant raised his voice and was quarrelsome.

After reviewing all the testimony and evidence the Board finds the claimant was insubordinate and was quarrelsome. The claimant had been an employee for more than four years and should know he is obligated to follow orders. It is not his prerogative to make any decision contrary to the welder when he is the welder's helper.

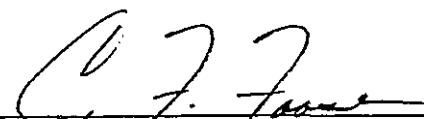
The only time an employee may refuse to obey an order is when he justifiably believes that following the order will be dangerous to him or to others. Apparently the claimant believed the pot had not set for three minutes. That fact is immaterial. When the welder told him to help remove the pot, he was obligated to follow those orders. The evidence further indicates the claimant was quarrelsome with his foreman.

Under these circumstances serious discipline is justified. Therefore, pay for time lost is not justified.

AWARD: Claim denied.

  
Preston J. Moore, Chairman

*Dated at Chicago, Illinois  
October 9, 1989*

  
Union Member

  
Carrier Member