

PUBLIC LAW BOARD NO. 2774

Award No. 12
Case No. 19

PARTIES Brotherhood of Maintenance of Way Employees
TO and
DISPUTE The Atchison, Topeka & Santa Fe Railway Company

STATEMENT "1. That the holding out of service and dismissal from service on
OF CLAIM Illinois Division Miscellaneous Machine Operator J.C. Lopez
was unjust.
2. That Claimant Lopez' personal record be expunged of subject
matter covered by this dispute and he be compensated for wage
loss and/or otherwise made whole, including benefit rights
and vacation as a result of being justly suspended and dismissed
from service."

FINDINGS

Upon the whole record, after hearing, the Board finds that parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Following an investigation on July 22, 1980 Claimant was dismissed for violation of Carrier Rules for allegedly being discourteous, insubordinate, quarrelsome, vicious and threatening to a foreman on June 30, 1980. The claim was properly filed and there are no procedural allegations. The Board notes that while the dispute was being handled on the property Carrier reinstated Claimant to service on a lencency basis with all rights unimpaired but without compensation for wage loss incurred.

Petitioner contends that Claimant was not properly disciplined in that the foreman was responsible for the initiation of the altercation. Petitioner cites the testimony of several witnesses who indicated that the foreman indicated he did not like Claimant and would take care of him in his own way.

Carrier, on the other hand, indicates that the evidence adduced at the hearing from

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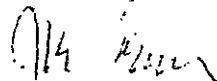
several witnesses including members of the same gang indicated that Claimant was abusive and threatening to the foreman and deliberately provoked the foreman attempting to start a fight. Thus, Carrier concluded that the evidence was ample that Claimant was responsible for the verbal altercation and should have been disciplined.

The Board notes that although Claimant disavowed responsibility for the alleged rule violations, he did admit that he had made several improper remarks to the foreman in question. The essence of this dispute is which witness can be believed. Since credibility is not an issue which a Board such as this may resolve, that issue properly was resolved by the hearing officer in this case. The hearing officer credited Carrier's witnesses rather than those of Petitioner or of the testimony of Claimant himself. Thus, the credibility finding was made by the Carrier's hearing officer and the Board may not disturb it for obvious and well established reasons.


Based on the conclusion reached above, there was ample evidence to support Carrier's conclusion that Claimant violated Carrier rules by his conduct on the date of the incident. Thus, since the evidence supports the conclusion reached by Carrier, the claim must be denied.

AWARD

Claim denied.



I.M. Lieberman, Neutral-Chairman


G.M. Garmon, Carrier Member
S.E. Fleming, Employee Member

January 21, 1982
Chicago, IL