

PUBLIC LAW BOARD NO. 2774

Award No. 181

Case No. 181

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

STATEMENT
OF CLAIM:

"1. That the Carrier's decision to remove Trackman Frederico Trujillo from service was harsh and unjust.

2. The Claimant shall be returned to service with vacation, seniority and all other rights unimpaired and he will be made whole for all time lost."

FINDINGS

Upon the whole record, after hearing, the Board finds that the 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.

The record reveals that Claimant herein, a Trackman who had employed by Carrier in 1965, was removed from service for being insubordinate, quarrelsome and vicious to his Supervisor on July 13, 1987, according to the charges, and was found guilty and thereafter dismissed. The record further reveals that on July 13, the day in question, Claimant was to have traveled from

Springfield, Colorado to Ulysses, Kansas and was to stay in Ulysses. He was given permission by his Foreman to drive his personal vehicle so that he and the truckdriver could return home each evening. Claimant left his section gang and went to his home where apparently he had left his keys. The gang, together with his Supervisor and a Foreman, left the Springfield depot at about 7:15 a.m. Upon passing Claimant's home in Springfield, the Supervisor noticed Claimant's vehicle parked at his residence. At approximately 7:25 a.m. after Claimant left his home he was flagged down by the Supervisor on the highway. The Supervisor, accompanied by the Foreman, asked Claimant what he was doing when he was supposed to be traveling to Ulysses. The Supervisor then instructed the Claimant to proceed to Ulysses, as he was previously told (after listening to his explanation). According to Carrier's testimony, Claimant behaved in an insubordinate, disrespectful manner to the Supervisor who then notified Claimant that he was being taken out of service for being insubordinate and quarrelsome. The Foreman's testimony corroborated that of the Supervisor with respect to the events which occurred on the morning in question. Claimant, of course, denied being insubordinate or quarrelsome or using abusive language to the Supervisor.

Carrier insists that there was no doubt that, after a fair investigation, Claimant was found guilty of violating Carrier's rules and the discipline assessed against him was warranted. This

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was particularly true, according to Carrier, in view of the seriousness of the charges and the fact that Claimant had a poor past record which included 11 prior incidents of discipline, including one prior dismissal.

Petitioner argues that the discipline in this case was clearly unwarranted. There is no question but that Claimant had the right to use his own automobile and the entire incident which resulted in the dismissal lasted no more than a minute or a minute and a half, at best. Furthermore, according to the Organization, Carrier ignored the fact that "it takes two to tango" in that the Supervisor chose to harass Claimant for reasons which are unknown. It was the Track Supervisor's conduct which precipitated the incident and Claimant should not have been penalized as Carrier did in this instance. He was clearly not wholly responsible for the incident or the argument.

Without much elaboration, it is apparent that the hearing officer in this investigation had the right to determine the credibility of the witnesses. He chose to credit the Carrier Supervisor's testimony with respect to the particular incident. Thus, from the standpoint of the evidence, there is no doubt but that Claimant was indeed quarrelsome and abusive to his Supervisor on the day in question. However, the Board must observe that Petitioner is correct in that there was obviously some harassment on the part of the Supervisor with respect to Claimant. Furthermore, as the

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Board views it, the particular discipline accorded Claimant in this case was excessive. Even with Claimant's poor past record, the circumstance of this particular incident did not warrant dismissal. It is the Board's view that a more appropriate remedy would have been a significant suspension for Claimant's actions. Thus it is concluded that Claimant shall be reinstated to his former position with all rights unimpaired, including seniority, but will receive no pay for time lost. His period out of service shall constitute a disciplinary lay off. In addition, it should be made clear to Claimant that this is his last opportunity to conform to Carrier's rules in order to retain his position.

AWARD

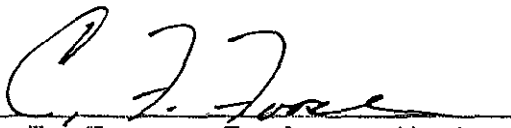
Claimant shall be reinstated to his former position with all rights unimpaired but without compensation for time lost. His period off duty shall be considered to have been a disciplinary lay off.

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote, Employee Member



G. M. Garmon, Carrier Member

Chicago, Illinois
October 11, 1988