

PUBLIC LAW BOARD NO. 2774

Award No. 20
Case No. 28

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

STATEMENT "1. That the dismissal of Southern Division Trackman Tommy Corona
OF CLAIM March 7, 1980, was arbitrary, capricious and in abuse of discretion.
2. That Tommy Corona be reinstated to service with seniority, vacation, all other benefit rights unimpaired, reimbursed of \$2,000 used as bail money, pay for all wage loss from March 7, 1980 forward and/or otherwise made whole."

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.

Claimant herein was dismissed by Carrier on March 31, 1980 following an investigation held on March 17, 1980 on the following charges:

"Arranged to report to Division Engineer's Office, Temple, Texas, 1:00 P.M. Monday, March 31, 1980, with your representative and witnesses, if desired, for formal investigation to develop all facts and place responsibility, if any, in connection with report of your alleged assault with knife and threats made to Trackman M.W. Engbrock at about 2:00 P.M. March 6, 1980, at Silsbee, Texas, and further reports of your alleged assault and threats made to Trackmen S.K. Brown, M.S. Keith and M.W. Engbrock on or about March 2, 1980, at Silsbee, Texas, and to determine whether or not you violated Rules 2, 16 & 17, General Rules for the Guidance of Employees, Form 2626 Std."

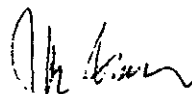
The nub of this dispute is the question of credibility. It is clear that if Claimant did indeed engage in the conduct with which he was charged, discipline imposed was appropriate. An examination of the record of the case indicates that Trackmen Engbrock, Keith and Brown all testified as to the threats with a knife involving the Claimant.

Other witnesses did not witness the incident by their testimony. Claimant, himself, of course denied that the incident took place. Thus, the credibility issue was joined.

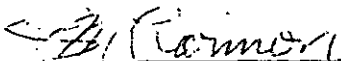
It is well established throughout this industry that in an investigation such as that involved in this dispute credibility issues may only be resolved by the hearing officer conducting the investigation, not by Boards such as this. The hearing officer, in this case, believed the statements made by the three employees who were allegedly assaulted; he did not believe the testimony of the Claimant. Thus, the decision on credibility was properly made by the hearing officer and this Board is compelled to abide by that determination. It is obvious that Boards cannot from the vantage point of many, many miles and time away from the hearing, not hearing the witnesses make any judgments concerning credibility whatsoever. Based on the clear evidence adduced via the credibility finding, Claimant was guilty of the charges. The evidence is substantial to indicate that result. Thus, Carrier was eminently justified in its decision to discipline Claimant by termination.

AWARD

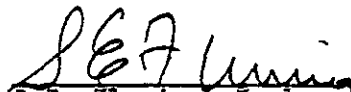
Claim denied.



I.M. Lieberman, Neutral-Chairman



G.M. Garmon, Carrier Member



S.E. Fleming, Employee Member

January 12, 1982
Chicago, IL