

PUBLIC LAW BOARD NO. 2774

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
Atchison, Topeka & Santa Fe Railway Co.

STATEMENT OF CLAIM:

1. That the Carrier's decision to remove former Illinois Division Machine Operator, George Lopez, from service, effective March 11, 1991, was unjust.
2. That the Carrier should now be required to reinstate the Claimant to service with his seniority rights unimpaired, and compensate for him all wages lost from March 11, 1991.

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, a Machine Operator, had a seniority date of August 27, 1975. The record indicates that on March 15, 1991, at 8:45 in the morning, there was an altercation between the Claimant, Track Supervisor Schultz, and a Signal Maintainer, R. W. Lefler. It appears that Track Supervisor Schultz, issued instructions to Claimant through a foreman, using profanity in the course of this instruction. Claimant overheard the exchange and confronted Track Supervisor Schultz. Profanity was used by both the Track Supervisor and Claimant at that time. In the course of this exchange between the Track Supervisor and Claimant, Signal Maintainer Lefler, involved himself in an attempt to defuse the situation. In the course of the altercation, which was brief, the Claimant invited the Track

Supervisor, who was 30 years his senior, to deal with the problem after work, off the property. Following the incident, which was as indicated previously brief, at the end of the work day Claimant was removed from service and was cited for an investigation. The investigation was for the purpose of developing the facts concerning "your allegedly being discourteous, insubordinate, quarrelsome, vicious and threatening to Track Supervisor Schultz, on March 15, 1991, at Acona." As a result of the investigation, Claimant was dismissed from service.

Petitioner argues that it was obvious and of long standing knowledge that Track Supervisor Schultz used profanity in dealing with his subordinates. In fact, it was this use of profanity, as even the Carrier admits, which was probably the cause of the altercation in the first place. However, the Organization notes that Mr. Schultz was not in any fashion disciplined for his use of something which was beyond the pale of "shop talk" in this case. Furthermore, Signal Maintainer Lefler, who intervened in the matter, was not cited for his admitted use of profanity in the course of his attempting to settle the situation down. In short, it was unquestioned that the instigator of the entire matter was a Supervisor, yet nothing, and no charges were filed against him. As a final point, the Organization argues that the evidence does not support the contention that Claimant threatened the Supervisor with bodily harm.

Carrier maintains that it is improper and impossible for Carrier to condone and accept uncontrolled or irresponsible outbursts, including threats, in the course of an employment relationship, particularly when such threats are directed to and at a Supervisor. In this case the Carrier notes that Claimant, some 30 years younger than Mr. Schultz, confronted him and indicated that he would "settle" the issue after work. This quite obviously and naturally was interpreted as a threat and an intent to fight with Mr. Schultz. Based on this alone, much less the use of

profanity, Carrier believes that it was eminently justified in finding Claimant guilty of the conduct specified. As a further point, Carrier notes that a review of Claimant's record reveals that he had received 100 demerits for four separate rule violations in the past, including demerits for being rude to his foreman in one instance, and was removed from service for being discourteous, insubordinate, quarrelsome, and threatening. In short, the work history and previous warnings, and discipline assessed, have indicated that Claimant has no sense of what appropriate behavior is and was not contrite with respect to his prior warnings. Carrier notes further that the involvement of the Signal Maintainer was merely to look out for the well being of the Track Supervisor in an attempt to defuse what looked like a fight brewing. In fact the very intervention of Mr. Lefler was testimony in support of the charge that Claimant was threatening Track Supervisor Schultz. Carrier freely admits that Mr. Schultz, on occasion, uses profane language, but indicates that this type of shop talk was not uncommon at all and was not unusual. Even if there was profanity directed personally against the Claimant by Mr. Schultz, it does not give him the right to resort to threatening behavior.

From the Board's point of view there is no question but that the language used by Claimant in this dispute was improper and beyond the pale of "shop talk". His invitation to his Track Supervisor, 30 years his senior, to meet him after work was not for the purpose of discussing the matter under any circumstances, but was clearly a threat to engage in physical altercation. Such conduct cannot be condoned. On the other hand there is also no doubt but that there was provocation in this instance. Track Supervisor Schultz's comments were beyond the definition of "shop talk" in this case. He used language toward Claimant, which is not acceptable, and he too must be considered at least partially culpable for the entire matter.

The guilt of Claimant must be considered in the light of his past record as well. Even though he had been an employee for a substantial period of time, he had had previous disciplinary episodes involving similar infractions. This is simply not tolerable. The Board believes that in this instance, his time out of work is a sufficient penalty, however, in view of the provocation on the part of the Track Supervisor. His reinstatement, however, will be considered a last chance opportunity for him to conform to reasonable rules of conduct for employees. Therefore, he should be reinstated to his former position, without pay for time lost, and with all other rights restored unimpaired. His restoration to service shall be considered to be a last chance opportunity. The time out of service shall be considered the penalty for the infraction in this instance.

AWARD


Claim sustained in part as indicated above..

ORDER

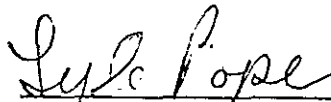
Carrier will comply with the Award herein within 30 days from the date hereof.



I. M. Lieberman, Neutral-Chairman



C. F. Foote
Employee Member



Lyle Pope
Carrier Member

Schaumburg, Illinois
June 30, 1993