

PUBLIC LAW BOARD NO. 2774

Award No. 23
Case No. 31

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

STATEMENT
OF CLAIM

- "1. That the dismissal of Eastern Lines (Illinois Division) Welder Helper Anthony Gaines was unjust.
2. That Claimant Gaines be reinstated with seniority, vacation, all benefit rights unimpaired, pay for wage lost 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, with approximately two years of seniority, was discharged following an investigation in September of 1980 for insubordination. He had been removed from service on September 3, 1980, the date of the incident which triggered his discharge.

The record of the investigation reveals that Claimant and members of his gang who were welding had worked approximately ten to thirteen hours a day for over fourteen consecutive days without a day of rest. On September 3, 1980 the gang had completed all of their assigned work and restored all their tools and equipment preparatory to going home to their families. At that time, while they were on the track traveling to their assembly point, the Foreman of another gang requested aid in one more boutet weld before the gang quit work for the day. The record indicates that members of the gang complained and were dissatisfied at the thought of one more weld after the lengthy period of work. The Foreman instructed the gang to get off the truck and get the work accomplished and all members of the gang, grumb+ ling, did so except Claimant who remained in the truck. After some words with the Foreman,

Claimant finally grumbling and complaining, got off the truck and got into a minor argument with the Welder at which point the Foreman told him to cool it. At this juncture Claimant insisted that the Foreman threatened to cut his time if he didn't get on with the job whereupon Claimant told the Foreman to cut his time which the Foreman did. An analysis of the investigation reveals that Claimant acted improperly on the day in question. Whether he deliberately or fortuitously refused to perform his functions is immaterial. His actions in fact, would cause any reasonable person to assume that he did not obey the instructions of his Foreman. Thus, Carrier had sufficient reason based on the evidence adduced at the hearing, to assess discipline for Claimant's behavior.

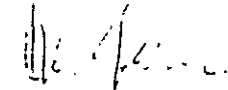
In this Board's view, however, the penalty of dismissal was too harsh under all the circumstances for the particular actions on the day in question. Even though Claimant was obviously insubordinate by his actions and attitudes, his Foreman was not entirely blameless in the manner in which Claimant was handled in view of the lengthy difficult period of time in which the gang had worked. Thus, there were some mitigating circumstances which would cast doubt on the severity of the discipline imposed. In this Board's view the period of time in which Claimant has been out of work should suffice as a disciplinary period to produce more effective work conduct in the future. Claimant should be aware that insubordination, whether by verbal refusal to accomplish work or obey a foreman or actions which were tantamount to the same thing, are intolerable and need not be condoned by Carrier. The discipline then will be mitigated and changed to a disciplinary suspension for the period in which Claimant has been out of service.

AWARD

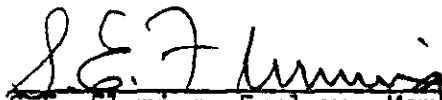
Claim sustained in part; Claimant will be restored to duty to his former position with seniority and all other rights unimpaired but the penalty of dismissal shall be converted into a disciplinary lay-off until such time as Claimant is restored to service.

ORDER

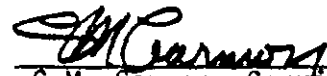
Carrier will comply with the Award herein with thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman



S.E. Fleming, Employee Member



G.M. Garmon, Carrier Member

May 13, 1982
Chicago, IL