

PUBLIC LAW BOARD NO. 4021

Award No. 22
Case No. 22

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

STATEMENT 1. Carrier's decision to suspend Northern Di-
OF CLAIM vision Trackman R. D. Copeland from ser-
 vice for the period July 10, 1985, to Jan-
 uary 5, 1986, was unjust.

 2. Accordingly, Carrier should be required to
 compensate Claimant Copeland for all wages
 lost during the period July 10, 1985, to
 January 5, 1986.

FINDINGS

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated November 26, 1985, and has jurisdiction over the parties and the subject matter.

Claimant had been employed by the Carrier since 1976, and had not been assessed discipline since 1977. He was employed as a Trackman on the date giving rise to this claim. The Claimant and his Foreman were discharged from service, effective July 10, 1985, as a result of a formal Investigation, after which they were each found guilty of violating Carrier Rules by participating in an altercation on July 1, 1985.

Both Claimant and the Foreman were offered leniency reinstatement without pay for time lost in September and October, 1985. The Foreman accepted the initial offer, and returned to duty; but the Claimant declined the initial offer, returning to duty in January of 1986, after the conditions of the reinstatement were changed to permit an appeal of the actions taken against him.

The Carrier argues that, by declining the initial offer of reinstatement, Claimant is estopped from claiming back pay for time lost subsequent to the offer. The Board disagrees. The mere offer of a conditional settlement does not terminate claim liability. While it is true that an unconditional offer of reinstatement

ment would effectively terminate the liability, Claimant has a right to appeal the entire action, and "take his chances" on Arbitration.

According to evidence adduced at the Investigation, Claimant and his Foreman arrived at the tool house, and found Roadmaster Earley, Track Supervisor Offord and Foreman Fry in attendance. The Claimant's Foreman approached the Roadmaster, and complained that he needed help in dealing with the Claimant. He stated that the Claimant had been calling him "stupid" and inviting him to fight. The Roadmaster met with Claimant and the Foreman, and told the Claimant to follow the Foreman's instructions, and do his job. The Claimant advised the Roadmaster that the Foreman was having them do "ignorant" things, got up to leave. The Claimant said something as he was leaving, and the Foreman lunged at him, shoved him into the doorway, and the two were seperated by others in the room.

The key matter in dispute is what the Claimant said as he was leaving. He asserts that he said "this is stupid". The Foreman asserts Claimant said "you know how ignorant the son-of-a-bitch

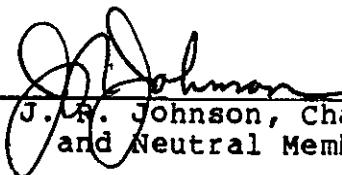
can be." Foreman Fry testified that Claimant said "He is still ignorant." Track Supervisor Offord testifies Claimant stated that the Foreman "was stupid and we all knew it." Finally, the Roadmaster testified that Claimant said "this is stupid, or he's stupid. But I do know he used the word 'stupid'".

It is clear from the record that Claimant and his Foreman had not been getting along that day, and it is clear that the Claimant - whatever he actually said - did not behave appropriately in the tool house. Whether he said the Foreman was "stupid" or the discussion with the Roadmaster and Foreman was "stupid", his comments and demeanor clearly exacerbated an already volatile situation. While Claimant did not strike the first blow, it is clear that he was at least a participant in the altercation.

The Claimant's conduct was in violation of the Carrier's Rules, and, in view of the nature of the offense, discipline was warranted. Discharge was an excessive penalty, and this fact was recognized, and adjusted, by the Carrier. The Board sees no reason to adjust it further.

AWARD

Claim denied.


C. F. Foose, Employee Member
L. L. Pope, Carrier Member
J. R. Johnson, Chairman
and Neutral Member

Dated: 8/22/86