

Award No. 166
Case No. 167

PUBLIC LAW BOARD NO. 4244

**ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
AND
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**

STATEMENT OF CLAIM: Carrier's decision to suspend Central Region Seniority District No. 2 Track Foreman F. W. Fernow, Jr. from service for 90 days and restrict his seniority to trackman for six (6) months was unjust.

Accordingly, Carrier should be required to compensate Claimant Fernow for all wages loss during the disciplinary period.


FINDINGS: This Public Law Board No. 4244 (the "Board") finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, the Board has jurisdiction over the parties and the subject matter involved.

In this dispute former Central Region Section Foreman F. W. Fernow, Jr. (the "Claimant") was notified to attend a formal investigation on September 14, 1994, concerning his alleged entering into an altercation with Carrier employee C. A. Nelson on August 31, 1994, which resulted in injuries to Nelson, in possible violation of Rules A, B, 1007 and 1008 of the Carrier's Safety and General Rules for All Employees. As a result of the investigation, the Carrier determined that the Claimant violated the cited rules. The Claimant was further advised that he was issued 90 days suspension, and upon his return to service after the suspension, he would be allowed to work only as a trackman for a period of six months.


In summary, the testimony of record established that on August 31, 1994, the Claimant approached Nelson as he was completing a weld on the main line. The Claimant and Nelson engaged in a conversation during which Nelson displayed a negative attitude complaining about the work and his supervisors. A verbal confrontation between the two then escalated into a physical altercation when the Claimant grabbed Nelson in a "bear hug". As the Claimant carried Nelson away from the main line, he stumbled, causing the two to fall to the ground. When they hit the ground, the two employees began striking each other until the altercation was broken up by other employees.

It is clear from the record that the Claimant violated the Carrier's rules when he entered into an altercation while on duty. In fact, there is no dispute that the Claimant was an active participant, and under the circumstances of this case, it is the Board's opinion that the Claimant must be held to a higher standard of accountability because of his foreman position. Further, contrary to the Organization's position, there is nothing in the record to mitigate the Claimant's responsibility in this matter. The Carrier had every right to discipline the Claimant, and conduct of this nature generally results in an employee's removal from service. Accordingly, the Board finds no basis to set aside or reduce the discipline.

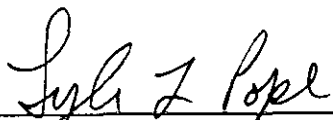
AWARD: Claim denied.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: August 4, 1995
Schaumburg, Illinois