

Award No. 67
Case No. 69

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.
TO THE) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: That the Carrier's decision to remove Texas Division Steel Bridgeman A. J. Sutton from service was unjust.

That the Carrier now reinstate Claimant Sutton with seniority, vacation, all benefit rights unimpaired and pay for all wage loss as a result of investigation held July 31, 1990, continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, creditable evidence that proved that the Claimant violated the rules enumerated in their decision, and even if Claimant violated the rules enumerated in the decision, permanent removal from service is extreme and harsh discipline under the circumstances.

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 Texas Division Steel Bridgeman A. J. Sutton (the "Claimant") was notified to attend a formal investigation on July 31, 1990 concerning alleged threats to beat up and kill Assistant Foreman W. K. Spinks at Gainesville, Texas on July 8, 1990, in possible violation of Rules A, B, 1007, 1008 and 1028 B of the Carrier's Safety and General Rules for All Employees. Pursuant to the investigation the Carrier determined that the Claimant violated Rules A, 1007, 1008 and 1028B, and he was removed from service.

Assistant Foreman Spinks testified at the investigation that the Claimant approached him on July 8, near the conclusion of the work shift and declared that Spinks was an inconsiderate person and the Claimant was tired of his attitude. The Claimant then threatened to beat up Spinks. Spinks testified that he informed the Claimant that a report would be filed regarding his remarks. The Claimant then responded allegedly that he was going to kill Spinks.

Spinks further testified that during this confrontation he was trying to defuse the situation but the Claimant was standing close to him and in his face. He also stated that the Claimant had his hand on Spinks' chest during the confrontation and pushed him back at one point.

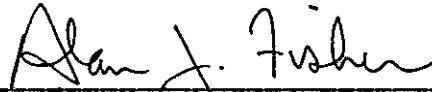
The Claimant admitted at the formal investigation that he confronted Spinks because he was upset with the way Spinks treated the work crew. He stated that he informed Spinks that if he didn't change someone "was going to kick his ass" someday. According to the Claimant Spinks responded with a challenge to the Claimant to hit him. After repeating the challenge to the Claimant, Spinks then asked the crew in the area whether anyone saw the confrontation. The Claimant stated that he responded to Spinks' challenge saying that if he ever struck him it would probably kill him.

Two witnesses were called by the Carrier. However, neither witness could corroborate the testimony offered by Spink or the Claimant.

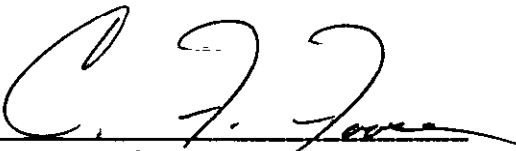
After reviewing the facts of this case the Board finds that the Claimant was quarrelsome and displayed such conduct which was in violation of the Carrier rules. The Board also finds that part of the responsibility for the incident must be shouldered by Assistant Foreman Spinks. The Board does not believe that Spinks exercised his managerial authority to the best of his ability to minimize the confrontation.

Under the circumstances of this case the Board concludes that the Claimant will be reinstated to service with his seniority rights unimpaired, but without pay for time lost. Further, the reinstatement is made on a last chance basis. The Claimant's action constituted a serious violation of the rules and will not be condoned by the Board.

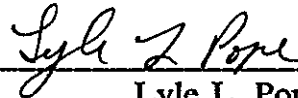
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated: November 27, 1990
Chicago, Illinois