

Award No. 77
Case No. 82

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 assess Claimant Gonzales a thirty day suspension after investigation April 4, 1991 was unjust.

That the Carrier now expunge the 30 day suspension from Claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation April 4, 1991, because a review of the investigation transcript reveals that substantial evidence was not introduced that indicates Claimant is guilty of violation of rules he was charged with in the Notice of Investigation.

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 Central Region Trackman D. V. Gonzales (the "Claimant") was notified to attend a formal investigation on April 4, 1991 concerning his belligerent and hostile conduct toward Foreman Victor Caballero on March 25, 1991. It was further alleged in the notice that the Claimant threatened Caballero with physical harm in possible violation of Rules A and 1007 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 and he was suspended from service for thirty (30) days commencing March 26, 1991.

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Foreman Caballero testified at the formal investigation that on the morning of March 25, 1991 he had a conversation with the Claimant at the high fill west switch at Fort Sumner, New Mexico. Caballero approached the Claimant regarding the Claimant not being in the Carrier vehicle when the crew was ready to leave and being off the Carrier's property without being excused after he had reported for duty. Caballero further testified that at the conclusion of their conversation the Claimant allegedly informed Caballero that he had better watch his back and every move because the Claimant would be doing so. Caballero perceived the Claimant's comments as threatening.

The Claimant acknowledged that a conversation took place on March 25, but he declared that he did not threaten Caballero. According to the Claimant, their conversation took place next to a jack hammer and Caballero was wearing ear plugs. He further testified that their exchange consisted of Caballero informing the Claimant to watch his back while working or he may be run over by a train. The Claimant stated that he replied to Caballero that he would watch his own back and pointed his finger at Caballero when he made the remark.

The Board has reviewed the evidence of record. As summarized above, the Claimant and Caballero have offered different versions of the incident in question. Moreover, there were no witnesses to the incident. Based on its review it is the Board's findings that Caballero's testimony is the truth of the matter.

It is the Board's opinion that the Claimant was guilty of the rules violation but that the discipline assessed the Claimant was excessive. However, in view of the Claimant's past record, which indicates that the Claimant has a tendency to act in the manner as alleged by Caballero, and the Board's doubt as to the veracity of the Claimant's testimony, the Claimant's suspension will be reduced only to fifteen (15) days.

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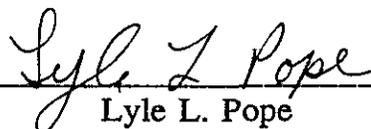
AWARD: Claim sustained as set forth above.



Alan J. Fisher
Chairman and Neutral Member



C. F. Foose
Organization Member



Lyle L. Pope
Carrier Member

Dated:

June 28, 1991
Schaumburg, Illinois