

Award No. 8
Case No. 7

PUBLIC LAW BOARD NO. 4244

PARTIES) ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
TO) AND
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: Carrier's decision to remove former Middle Division Trackman S.C. Gilbert from service effective May 29, 1986 was unjust.

Accordingly, Carrier should be required to reinstate Claimant Gilbert to service with his seniority rights unimpaired and compensate him for all wages lost from May 29, 1986.

FINDINGS: This Public Law Board No. 4244 (the "Board") upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended. Further, this Board has jurisdiction over the parties and the subject matter involved, and that the parties to this dispute were given due notice of the hearing thereon.

In this dispute former Middle Division Trackman S.C. Gilbert (the "Claimant") was notified to attend a formal investigation on April 28, 1986, to develop all the facts and place his responsibility, if any, in connection with possible violation of Rules 16, 17 and 31-B of the Carrier's General Rules for the Guidance of Employees, 1978, Form 2626 Std., concerning the Claimant's alleged striking or shoving Machine Operator E.A. Dean on April 11, 1986, while on duty. The investigation was postponed and eventually held on May 22, 1986. Pursuant to the investigation the Claimant was found guilty and he was removed from service. The Organization filed a claim on the Claimant's behalf, which is now before the Board for a decision.

The evidence of record shows that the alleged altercation took place at approximately 11:30 a.m. on April 11, 1986, while the gang members were working on a crossing project on the Little River Subdivision.

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Trackman D.D. Roland testified that while he was driving a spike into a crossing plank, he missed the nail and broke off a piece of planking. Roland then jokingly asked if anyone had any glue in order to glue the broken piece back on. E.A. Dean responded to the effect that if they had some super glue they could glue a boy's fingers together. (This statement was directed at the Claimant in reference to domestic problems that the Claimant was experiencing.) The Claimant immediately threw down his work tools and confronted Mr. Dean. He then struck Mr. Dean in the chest with both hands which forced Dean backwards. Foreman R.N. Alvarez then interceded by separating the two men.

Mr. Dean testified that he had no idea why the Claimant became provoked. Mr. Dean also testified that the Claimant did not strike him but it was a hard push.

The Claimant testified that Mr. Dean had been provoking him since the start of the shift. He admitted that he confronted Dean as testified by Roland but he did so only because Dean was talking about the Claimant's personal life. Furthermore, the Claimant admitted that he pushed Dean.

Foreman Alvarez testified that he had seen the Claimant and Dean facing each other and talking but he only heard the Claimant tell Dean to leave his family out of it. At that point Alvarez instructed both men that there would be no conflicts on his gang. Alvarez also testified that he did not see any physical contact between the Claimant and Dean.

The Board has read and studied all the evidence of record. The Board finds that the Carrier complied with all terms of the collective bargaining agreement in its handling of this matter. The Board also finds that the Claimant was properly found guilty of violating the Carrier's rules as charged. The Claimant acted irresponsibly and irrationally when he confronted Mr. Dean. However, after reviewing all the circumstances of this case, it is clear that the Claimant was provoked by Mr. Dean. Although there is no excuse for the Claimant's behavior, in view of his past work record the Board finds that the Claimant should be given one last opportunity to return to the Carrier's service.

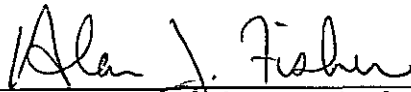
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Accordingly, the Claimant should be reinstated to service but without back pay. Further, the Claimant will be required to pass all Carrier medical examinations prior to his return to service.

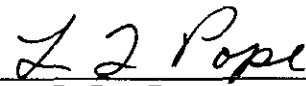
AWARD: Claim sustained as set forth above.



Alan J. Fisher, Chairman
and Neutral Member



C.F. Foose
Organization Member



L.L. Pope
Carrier Member

Dated: December 3, 1987
Chicago, Illinois