

Award No. 9
Case No. 9

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 Coast Lines Welder O.H. Vidana from service effective June 19, 1986, was unjust.

Accordingly, Carrier should be required to reinstate Claimant Vidana to service with his seniority rights unimpaired and compensate him for all wages lost from June 19, 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, the 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 Coast Lines Welder Oscar H. Vidana (the "Claimant") was notified to attend a formal investigation on July 23, 1986, to develop all the facts and place his responsibility, if any, in connection with possible violation of Rules 2, 14, 15, 16 and 31-B of General Rules for the Guidance of Employes, 1978, Form 2626 Std., concerning the Claimant's alleged insubordination, quarrelsome and vicious behavior towards Track Supervisor Mike Canales, and alleged walking off the Carrier's property after having been instructed not to on June 19, 1986, at or about Mile Post 147 on the Carrier's Third Subdivision. Pursuant to the formal 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 incident occurred on June 19, 1986. On that morning at approximately 10:45 a.m., Track Supervisor Canales instructed the Claimant to repair the frog at the east end of the setout track on the main line at Mile Post 147. The Claimant suggested that the defective insert on the frog be replaced rather than repaired but Canales explained that time and manpower limitations prevented that course of action. The Claimant was instructed to begin the welding work immediately after lunch. Canales then departed the location at approximately 11:25 a.m.

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The record shows that shortly thereafter the Claimant spoke with Assistant Roadmaster R.D. Campbell and that he requested Campbell to overrule Canales' decision to weld on the frog. Campbell informed the Claimant that he should do as instructed by Canales.

At approximately 2:00 p.m., Canales heard the Claimant on the radio with Sheila Yard asking if the Yard had a replacement in inventory for the particular frog under repair. Canales cut in on the radio conversation and again instructed the Claimant to continue with the welding work.

At approximately 5:00 p.m., Canales returned to Mile Post 147 and discovered that very little work had been performed. Prior to his arrival he heard the Claimant on the radio requesting assistance from another employee. When Canales questioned the Claimant on this matter, the Claimant replied that he needed a Carrier truck so he could go to a telephone to call his wife and bring him something to eat. Canales instructed the Claimant to stay at the work site until the work was finished. Canales further stated that he would get the Claimant and his helper something to eat. Shortly thereafter, when Canales returned to the work site with dinner, the Claimant refused the food and became argumentative with Canales. Then, the Claimant left the work site and walked to a warehouse off the property. He returned fifteen minutes later but refrained from working. At that time, about 7:00 p.m., Canales began making notes of the Claimant's behavior and called other supervisory personnel. The Claimant then directed vulgar and threatening language at Canales and proceeded to walk away from the work site. When he returned at approximately 7:30 p.m. other supervisory personnel had arrived at the work site, and the Claimant was relieved from duty pending an investigation. Welder Helper Durate was then instructed to finish the repair job. Durate finished the job around 10:00 p.m.

Welder Helper Durate, who was the Claimant's helper, verified that the Claimant was argumentative with Canales and that the Claimant directed vulgar and threatening language at Canales. Durate also testified that the Claimant intentionally delayed completing the repair. The Claimant had indicated to Durate at the start of the repair job that he was going to take a long time to do the job. It was Durate's opinion, as confirmed by Canales, and Assistant Roadmaster R.D. Campbell, that the entire repair time should have been less than five hours.

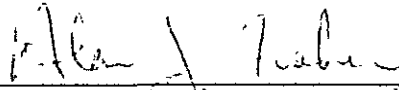
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The Board has read and studied all the evidence of record. The Board finds that the Carrier complied with all terms of the collective bargaining agreement in its handling of this matter. There is no evidence that the Carrier violated Rule 13 and Appendix 11 of the agreement between the parties dated January 1, 1984 as amended. The Board also finds that there is sufficient evidence in the record for the Carrier to find the Claimant guilty of the alleged rules violations. In view of the seriousness of the charges and the Claimant's past record, the discipline assessed was appropriate.


AWARD: Claim denied.



Alan J. Fisher, Chairman
and Neutral Member



C.F. Foose
Organization Member



L.L. Pope
Carrier Member

Dated: December 3, 1987
Chicago, Illinois