

Award No. 90
Case No. 93

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: Carrier's decision to remove former Eastern Region Trackman C. W. Thompson from service, effective March 22, 1991 was unjust.

Accordingly, Carrier should now be required to reinstate the claimant to service with his seniority rights unimpaired and compensate him for all wages lost from March 22, 1991.

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 Eastern Region Trackman C. W. Thompson (the "Claimant") was notified to attend a formal investigation on April 9, 1991 concerning his alleged responsibility in regard to an altercation on March 21, 1991 while on company property in possible violation of Rules A, B, 1007 and 1008 of the Carrier's Safety and General Rules for All Employees. Pursuant to the investigation the Carrier determined that the Claimant violated the cited rules, and he was removed from service.

Machine Operator C. D. Moran testified at the formal investigation that the Claimant was verbally abusive and physically assaulted him on March 21, 1991. Moran testified that while eating his lunch in the Maintenance garage that day the Claimant approached to within inches of his face and began to direct racial slurs at him. Moran declared that he tried to walk away from the confrontation, but the Claimant pursued him. The Claimant then shoved him backwards. Moran fell over a chair and hit a wall.

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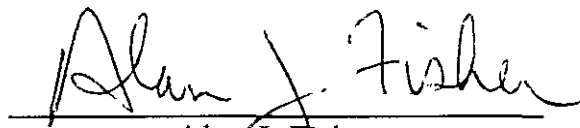
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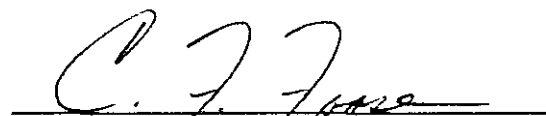
Several witnesses corroborated Moran's testimony. Section Foreman J. J. Craig testified that the Claimant used profane and threatening language as alleged, and Craig saw the Claimant push Moran over a chair. Section Foremen M. Moreno and W. L. Mathis testified that the Claimant directed racial slurs at Moran, and they heard the Claimant threaten Moran with physical harm. Mathis also testified that Moran was trying to avoid a confrontation with the Claimant.

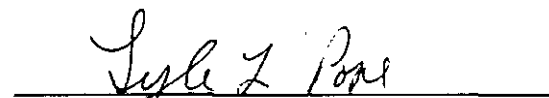
The Claimant admitted at the investigation that he used racial slurs and shoved Moran. However, the Claimant believed that his behavior was justified. The Claimant alleged that Moran tried to run him over with a truck that morning when the crew was doing track work. He claimed that Moran did not stop to deliver spikes to him when he flagged Moran to do so. The Claimant acknowledged that he was aware of the approaching truck, it was traveling at a slow speed, and he had sufficient time to step away from the rail as the truck passed him and then stopped.

The Board finds that the Claimant was guilty of violating the cited rules. The Board has held in its previous awards that physical assault, threatening language, and verbal abuse are not acceptable conduct while on duty. However, the Board believes that the Claimant's permanent removal from service is excessive. The Claimant shall be give a "last chance" opportunity to demonstrate that he can be a responsible employee and abide by the Carrier's rules. Accordingly, the Claimant is to be reinstated to service with his seniority rights unimpaired, but without pay for time lost.

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: February 12, 1992
Schaumburg, Illinois