

PUBLIC LAW BOARD NO. 1582

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

STATEMENT OF CLAIM:

1. That the Carrier's decision to assess Claimant Jerome Johnson thirty (30) demerits after investigation June 11, 1987 was unjust.

2. That the Carrier now expunge thirty (30) demerits from claimant's record, reimbursing him for all wage loss and expenses incurred as a result of attending the investigation June 11, 1987 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. 1582 finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that this Board has jurisdiction.

In this dispute the claimant was notified to attend an investigation in Chanute, Kansas on June 11, 1987. The claimant was charged with the possible violation of Rules 2, 7, 14, 16 and 31-B concerning his alleged failure to obey instructions and being insubordinate and quarrelsome with Foreman T. W. Firebaugh at approximately 3:00 p.m. on May 15, 1987 while assigned as trackman on the Owasso Section.

Foreman T. E. Firebaugh testified that on May 15, 1987 his crew was working at a derailment, and he had one set of joints, the old 3-M joints had broken two bolts out, and those were to be returned. He then testified they were going to put regular 90 pound angle bars on, and they were running short of material.

Foreman Firebaugh further testified there were a couple of angle bars back at the truck, but he was not sure if they were the right size, so he instructed Jerome Johnson, the claimant herein, to take off the old insulated joints and replace them with 90 pound bars. He then testified he checked the ones on the truck and one of them was a bad one, and one was an 85.

Foreman Firebaugh testified that he told the claimant to go ahead and remove a pair of angle bars off of an adjoining track which was abandoned. He testified the claimant told him that was stupid a couple of times, and he told the claimant he wasn't going to listen to that, and if the claimant wasn't going to do what he was told, he would cut the claimant's time. He also testified that claimant told him he couldn't do that, and he told the claimant he would, just to get away from him, his time was cut. He testified that

the claimant said he had to take him in right then, and he replied to the claimant "No, I don't." He further testified that the claimant finally got in the truck, and they went in at quitting time, and he wired the office that he did cut the claimant's time at 3 o'clock for that reason.

Foreman Firebaugh testified that the claimant did not take the bars off as instructed. He stated that he told the claimant at least twice to take the bars off. He also stated that Jess Miranda, Rex Welch and Jim Beien were there. He stated that Jim Beien was getting a drink and did not hear what was said.

Trackman J. J. Miranda wrote a statement which read: "While we were working on switch, Foreman Firebaugh told J. J. Johnson to take some angle bars off, there was some other remarks which were not clear to me. The statement that I did hear was that Foreman Firebaugh was stupid."

Mr. Miranda stated that when he got to thinking about it, he did not know whether Mr. Johnson said the job was stupid or the person was stupid.

The claimant testified that he was instructed to get over there and get those bars off that track over there, and he said "That's stupid" and the Foreman said "No, you're stupid," and he told the foreman "You're stupid." The claimant then stated that the Foreman said "You're refusing to do what I say," and he told the Foreman "No, I am not refusing." He testified the Foreman said "Get over there and do it."

The claimant testified that they continued to argue, and the Foreman then said "Well, I am sick of this shit, your time is cut." The claimant testified there were a few more words, but since his time was cut, he ceased to work and sat down on the truck. The claimant also testified that he was heading toward the direction to do what the Foreman had told him to do when the Foreman cut his time.

The claimant testified that he believed the Foreman's "blowing up" caused the problem and not his statement that the Foreman's instructions were stupid. The claimant also testified that he did call the Foreman stupid. He did, however, state that the Foreman called him stupid first, after he had said that the foreman's instructions were stupid.

The Board has reviewed all of the testimony and evidence of record. There can be no question but that the verbal altercation occurred when the claimant told the Foreman that his instructions were stupid. This does not constitute a suggestion. The claimant could have asked the Foreman in a normal manner if the work could be done on the following work day, and if the Foreman had replied "No," the claimant could have complied with the Foreman's directions.

Making a statement to the Foreman, who he believed disliked him, that such an order was stupid is definitely quarrelsome. The claimant then became involved in a verbal altercation with the Foreman, and certainly the claimant did not immediately start to comply with the Foreman's orders.

Under these circumstances there is no justification to set the discipline aside.

AWARD: Claim denied.

*Preston J. Moore*

Preston J. Moore, Chairman

*Dated at Chicago, Illinois  
August 4, 1987*

*C. F. Foote*

Union Member

*L. Z. Pope*

Carrier Member