

PUBLIC LAW BOARD NO. 2139

Parties: Brotherhood of Maintenance of Way Employees  
and  
The Washington Terminal Company

Statement of Claim: "(1) The treatment imposed on Claimant, G. W. Jackson, Trackman, was neither fair nor impartial in that this employee was singled out and the Carrier's witness, Officer Davis' statement was contradictory thereby perjuring his testimony.

(2) Claimant G. W. Jackson, Trackman, be reinstated to his former position as Trackman, Washington Terminal Company."

Discussion: The Claimant was dismissed by the Carrier, after a duly noticed Investigation, wherein the Carrier charged the Claimant with giving false and perjured testimony at the June 8, 1977 Investigation involving Frank Branch and G. E. Thompson whose discipline was discussed in Awards Nos. 1 and 2.

At the Investigations, both of Branch and Thompson, the Claimant was asked whether he was working at approximately 12:30 P.M. on May 13, 1977. He replied that he was at the job site at 12:30 P.M. at #22 Track.

Officer Davis testifying at the Investigation testified that the Claimant was present at the incident where Branch and Thompson interfered with him and his fellow officers in their attempts to arrest and handcuff Employee Williams. However, Officer Davis testified that the Claimant did not interfere with the efforts of the police officers.

At the Investigation of the Claimant held on June 28 and July 6, 1977, both Officers Davis and Headen testified that the Claimant was present at the occurrence on May 13, 1977. The Claimant admitted that he was present but denied that he saw anything that transpired. Both Mr. Branch and Mr. Thompson testified at this Investigation that the Claimant did not participate or was he involved in the attempt to wrestle Employee Williams to the ground. At this same Investigation, Officer Davis testified that the Claimant was involved in the physical interference of the arrest, which testimony was at variance with his written statements introduced at the Branch and Thompson Investigation.

Employee Kirby testified he was present at the incident and that the Claimant was not interfering with the police officers. Previously Mr. Kirby had testified that he was not present at the incident. The Carrier stated it had decided not to discipline Mr. Kirby for his false testimony.

#### Carrier's Position

The Carrier emphasized that it had disciplined the Claimant for false and perjured testimony and not for his role or participation in the fracas between the police officers, Mr. William and Mr. Branch and Mr. Thompson.

The Carrier stressed that there was evidence to show that the Claimant was present at the scene of the incident on May 13, 1977, and was not at his work site. He was positively identified by Officers Davis and Headen as being present and in fact also testified that he was present. Since the record showed conclusively that the Claimant was present at the scene of the incident, the Carrier was justified in concluding that he lied under oath when he testified at the two aforementioned

Investigation he had no knowledge of the facts involved therein.

The Carrier stated that the Claimant committed an act of dishonesty in lying at the Investigation and it was justified in assessing the punishment of dismissal.

The Carrier added that it had exercised its prerogative not to discipline Employee Kirby for his false statements. However, it denied that it had unfairly singled out the Claimant for discipline or that the Claimant had been treated unfairly or discriminatorily. He was proved guilty as charged, and accordingly disciplined.

#### Organization's Position

The Organization stated that the Claimant was singled out unfairly for discipline. It alleged that Officer Davis committed perjury by contradicting himself but nothing was done to him. Moreover, the Claimant's Investigation disclosed that Mr. Kirby had testified falsely when he stated originally that he was not at the scene of the incident.

The Organization stated that the testimony of Officers Davis and Headen made it obvious that they were confused as to who was involved, who had interfered, and what were the identities of the employees during the confrontation.

The Organization stated that if the Claimant was only present at the scene in the sense of passing through the 2nd Street Gate on the way to his work site at No. 22 Track, the other side of the Station, this Claimant could not have any knowledge of the incident. There were no witnesses introduced to show that the Claimant was not at his work site after leaving the scene of the incident, before the confrontation began.

The Organization stated that the Carrier prejudged the Claimant's case when all that he did was to walk through 2nd Street Gate and continue on to his work site. He was not only prejudged but he also received harsh and excessive discipline.

Findings: The Board, upon the whole record and all the evidence, finds that the employee and Carrier are Employee and Carrier within the meaning of the Railway Labor Act; that the Board has jurisdiction over the dispute, and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds that the weight of the credible evidence disclosed that the Claimant was physically present while the involved employees and the police officers were engaged in trying to arrest Mr. Williams. The Carrier has not disciplined the Claimant for interfering with the police officers, but for falsely testifying that he had no knowledge of the facts of the physical confrontation when there is probative evidence that he was actually present, and therefore it was extremely unlikely he had no information about the episodes.

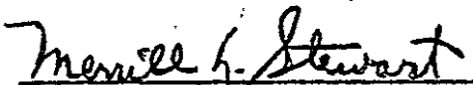
The Board finds that the conduct of the Claimant warranted discipline because he was guilty of a serious offense in frustrating the Carrier from obtaining all necessary and relevant information concerning the May 13, 1977 incident. However, the Board also finds that the Claimant's offense was not of the same stature as the employees who physically interfered with the activities of the police officers. Moreover, the Board finds that it is somewhat disparate treatment to exculpate completely Mr. Kirby for his false testimony but to discharge the Claimant for approximately the same offense.

The Board finds that the Claimant's conduct warrants a severe measure of discipline, and therefore it modifies his discharge into a suspension of approximately 18 months, seniority unimpaired.

Award: Claim disposed of in accordance with the Findings.

Order: The Carrier is directed to comply with the Award,  
on or before November 19, 1978.

  
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Jacob Seidenberg, Chairman and Neutral Member

  
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Merrill L. Stewart, Carrier Member

  
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Fred Wurpel, Jr., Employee Member

November 18, 1978